code of federal regulations

Aeronautics and Space

14

PARTS 200 TO 1199

Revised as of January 1, 1986

CONTAINING
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OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JANUARY 1, 1986

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.. as of January 1
Title 17 through Title 27..as of April 1
Title 28 through Title 41..as of July 1
Title 42 through Title 50.. as of October 1

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

THIS TITLE

Title 14—Aeronautics and Space is composed of five volumes. The first three volumes contain Chapter I—Federal Aviation Administration (Parts 1-59, 60-139, and 140-199). The fourth volume contains Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-1199) and the fifth volume contains Chapter V—National Aeronautics and Space Administration (Part 1200-End). The fourth volume (Parts 200-1199) includes a redesignation table and a table showing the disposition of the Civil Aeronautics Board's regulations, upon the expiration of the agency. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

For this volume, Laurence L. Davey was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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CHAPTER II—OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION (AVIATION PROCEEDINGS)

(Parts 200 to 1199)

EDITORIAL NOTES: 1. Chapter II was transferred from the Civil Aeronautics Board to the Department of Transportation on January 1, 1985. For a document giving the diposition of CAB regulations once the Agency ceased to exist, see 50 FR 452, Jan. 4, 1985.

2. For nomenclature changes made to Chapter II, see 37 FR 18909, Sept. 16, 1972; ER-1023, 42 FR 47825, Sept. 22, 1977; ER-1085, 43 FR 59829, Dec. 22, 1978.

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SUBCHAPTER A—ECONOMIC REGULATIONS

PART 200—DEFINITIONS AND INSTRUCTIONS

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200.2 Act.
200.3 Section.
200.4 Rule, regulation, and order.
200.5 Other terms.
200.6 Terms defined by Act.
200.7 Instructions.
200.8 Supplemental air carrier.

AUTHORITY: Sec. 204, 72 Stat. 743, as amended; 49 U.S.C. 1324, unless otherwise noted.

SOURCE: ER-146, 14 FR 3524, June 29, 1949, unless otherwise noted.

§ 200.1 Board.

The term "Board" means the Civil Aeronautics Board.

§ 200.2 Act.

The term "Act" means the Federal Aviation Act of 1958. All orders, certificates, rules, regulations, notices, and other documents issued by the Board or under its authority and referring to the Federal Aviation Act of 1958, or to certain provisions thereof, shall be deemed to refer also to the Civil Aeronautics Act of 1938, as amended, or to the corresponding provisions thereof, to the extent the latter Act, or corresponding provisions thereof, may be applicable.

[ER-248, 24 FR 417, Jan. 17, 1959]

§ 200.3 Section.

The term "section" refers to a section of the act or a section of the regulations in this chapter, as indicated by the context.

§ 200.4 Rule, regulation, and order.

The terms "rule", "regulation", and "order" refer to the rules, regulations, and orders prescribed by the Board pursuant to the act.

§ 200.5 Other terms.

The terms "this section", "pursuant to this section", "in accordance with the provisions of this section", and words of similar import when used in this chapter refer to the section of this subchapter in which such terms appear.

§ 200.6 Terms defined by Act.

Unless otherwise specifically stated, other words and phrases have the meaning defined in the Act.

§ 200.7 Instructions.

The regulations of the Board may be cited by section numbers. For example, this regulation may be cited as § 200.7 of the "Economic Regulations." The sections contained in the Rules of Practice under Title IV and sections 1022 (d) to (i) of the Act, may also be cited by appropriate rule numbers. For example, section 10 may be cited as "rule 10 of the Rules of Practice." In each case in which a rule, regulation, order, or other document of the Board refers to a regulation or a rule of practice of the Board by means of the numbering system used prior to the adoption of section numbers, such reference shall be deemed to relate to the appropriate new section number of this subchapter.

§ 200.8 Supplemental air carrier.

Unless the context otherwise requires, the term "supplemental air carrier" as used in existing or future regulations and orders of the Board includes persons holding operating authority conferred upon them by section 8(a) of Pub. L. 87-528 of July 10, 1962; persons holding operating authority conferred upon them by the Board pursuant to section 7 (a), (b), or (c) of said Pub. L. 87-528; and persons holding certificate authority conferred upon them by the Board pursuant to section 401(d)(3) of the Federal Aviation Act of 1958, as amended. These persons shall also be deemed included in the term "air carrier" where that term, in the context, includes supplemental air carriers.

(Secs. 401, 403, 404, 407, 408, 409, 411, 412, 413, 414, 415, 416, 417, 1002(i), 72 Stat. 754, 758, 760, 766, 767, 768, 769, 770, 771, 788; secs. 7 and 8, 76 Stat. 146, 147; 49 U.S.C. 1371, 1373, 1374, 1377, 1378, 1379, 1381, 1382, 1383, 1384, 1385, 1387, 1482)

[ER-359, 27 FR 7983, Aug. 10, 1962]

PART 201—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Sec.
201.1 Formal requirements.
201.2 Amendments.
201.3 Incorporation by reference.
201.4 General provisions concerning contents.
201.5 Operations other than between fixed points.
201.6 Advertising and sales by applicants.

AUTHORITY: Secs. 204, 401, 402, 403, 411, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 757, 758, 769, 771; 49 U.S.C. 1324, 1371, 1372, 1373, 1381, 1386, unless otherwise noted.

SOURCE: ER-146, 14 FR 3524, June 29, 1949, unless otherwise noted.

§ 201.1 Formal requirements.

Applications for certificates of public convenience and necessity, or amendments thereof, shall meet the requirements set forth in Part 302 of this chapter as to execution, number of copies, service, and formal specifications of papers. All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

NOTE: Special requirements for application for extension of a fixed-term route authorization granted by exemption pending disposition of an application for a certificate incorporating such authorization, are set forth in § 302.909 of this chapter (Procedural Regulations). See also § 377.10(c) of this chapter (Special Regulations).

(Approved by the Office of Management and Budget under control number 3024-0069)

(Secs. 416(b), 72 Stat. 771; 49 U.S.C. 1386; sec. 9(b), 60 Stat. 242; 5 U.S.C. 1008)

[ER-378, 28 FR 3585, Apr. 12, 1963, as amended by ER-550, 33 FR 18434, Dec. 12, 1968; ER-1366, 48 FR 53668, Nov. 29, 1983]

§ 201.2 Amendments.

If, after receipt of any application, the Board shall request the applicant to supply it with additional information, such information shall be furnished in the form of an amendment to the original application. All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part as to form, number of copies, and other essential respects.

[ER-550, 33 FR 18434, Dec. 12, 1968]

§ 201.3 Incorporation by reference.

In general it is desirable that incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

§ 201.4 General provisions concerning contents.

(a) The statements contained in an application shall be restricted to significant and relevant facts.

(b) Requests for authority to engage in interstate and overseas air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation shall not be included in the same application with requests for authority to engage in nonscheduled air transportation.

(c) Each application shall give full and adequate information with respect to each of the items set forth in this paragraph. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Board fully with the particular circumstances of its case. Among other things, every such application shall contain the following information:

(1) The full name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.) and the name of the State under the laws, of which it is organized.

(2) A statement that the applicant is a citizen of the United States as defined by section 101(13) of the Act. It is not required that the application

shall contain all the evidence which the applicant is prepared to present at the hearing or otherwise in support of such statement, but the application shall at least indicate the nature and result of its investigations in that matter and the character of the evidence it will be prepared to present in support of citizenship.

(3) For cargo-only transportation within the States of Alaska or Hawaii and for foreign air transportation, an adequate identification of each route for which a certificate is desired and whether or not this transportation is to be rendered on scheduled operations. The identification of each route shall name the terminal and intermediate points to be included in the certificate for which application is made. For all applications, a specification of the type or types of service (mail, passengers, or property) to be rendered and whether such services are to be rendered on scheduled operations.

(4) A map (which may be attached as an exhibit) drawn approximately to scale showing all terminal and intermediate points to be served, giving the approximate mileages between all adjacent points, and the principal overall distances.

(5) A statement as to the type of aircraft applicant proposes to use in the new service and whether such aircraft is presently owned by the applicant.

(6) If applicant does not hold a certificate of public convenience and necessity authorizing air transportation, the name and type of business of any affiliate, subsidiary, or principal stockholder of applicant engaged in any form of transportation as a common carrier or engaged in any phase of aeronautical activity.

(d) [Reserved]

(e) Applications covered by Subpart Q of Part 302 of this chapter shall also contain the following facts and projections:

(1) For scheduled carriers only, an illustrative service proposal for the type of markets that the applicant plans to serve initially showing the type and capacity of the equipment it would use and the elapsed trip time of flights in block hours over the segments.

(2) An estimate of the gallons of fuel to be consumed in the first year of operations if the proposed service is instituted; and

(3) A statement regarding the availability of the required fuel.

(Approved by the Office of Management and Budget under control number 3024-0069)

(Secs. 102, 404, and 1002 (72 Stat. 740, 760, and 788 (49 U.S.C. 1302, 1374, and 1482)); National Environmental Policy Act of 1969 (Pub. L. 91-90, 42 U.S.C. 4321 *et seq.* and E.O. 11514; sec. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1723, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

[ER-146, 14 FR 3524, June 29, 1949, as amended by ER-550, 33 FR 18434, Dec. 12, 1968; ER-925, 40 FR 37182, Aug. 25, 1975; ER-1114, 44 FR 24264, Apr. 25, 1979; ER-1195, 45 FR 53453, Aug. 12, 1980; ER-1274, 47 FR 133, Jan. 5, 1982; ER-1366, 48 FR 53688, Nov. 29, 1983]

§ 201.5 Operations other than between fixed points.

An application for a certificate authorizing operations other than between fixed points, or not having terminal or intermediate points capable of precise description, need comply with the provisions of § 201.4(c) (3) and (4) only to the extent that it shall clearly describe the authorization sought by the applicant.

§ 201.6 Advertising and sales by applicants.

(a) An applicant for a new or amended certificate of public convenience and necessity to engage in air transportation shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Board; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the certificate or amended certificate has become effective or the Board issues a notice authorizing sales.

(b) An applicant for a new or amended certificate of public convenience and necessity may advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Board only if such advertising or schedule listings prominently state. "This service is subject to receipt of government operating authority."

[ER-1376, 49 FR 9863, Mar. 16, 1984]

PART 202—CERTIFICATES AUTHORIZING SCHEDULED ROUTE SERVICE: TERMS, CONDITIONS, AND LIMITATIONS

Sec.
202.1 Applicability.
202.2 Failure to comply.
202.11 Nonstop authorization.
202.12 Filing requirements for adherence to Montreal Agreement.

AUTHORITY: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, (49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1368); Reorganization Plan No. 3 of 1961, 26 FR 5989.

SOURCE: ER-884, 39 FR 40255, Nov. 15, 1974, unless otherwise noted.

§ 202.1 Applicability.

Unless the certificate or the order authorizing its issuance shall otherwise provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Board, shall apply to the exercise of the privileges granted by each certificate issued under section 401 of the Act, other than a certificate for supplemental air transportation.

§ 202.2 Failure to comply.

It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of Title IV of the Act or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 401(g) of the Act even though the failure to comply occurred without the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

§ 202.11 Nonstop authorization.

Subject to the provisions of section 405(b) of the Act, the holder of a certificate may inaugurate scheduled nonstop service between any two points not consecutively named in its certificate or approved service plan (if such certificate or approved service plan authorizes service between such points and does not prohibit nonstop service between them) upon the effective date of a schedule, showing such nonstop service, filed with the Board in accordance with Part 231 of this subchapter.

§ 202.12 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of Part 203. CAB Form 263 may be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(Approved by the Office of Management and Budget under control number 3024-0064)

[ER-1325, 48 FR 8042, Feb. 25, 1983, as amended by ER-1344, 48 FR 31012, July 6, 1983]

PART 203—WAIVER OF WARSAW CONVENTION LIABILITY LIMITS AND DEFENSES

Sec.
203.1 Scope.
203.2 Applicability.
203.3 Filing requirements for adherence to Montreal Agreement.
203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.
203.5 Compliance as condition on operations in air transportation.

AUTHORITY: Secs. 101, 204, 401, 402, 403, 404, 407, 406, 411, 416, 417, 418, 419, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 757, 758, 760, 766, 767, 769, 771; 76 Stat. 145; 91 Stat. 1284; 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1378, 1381, 1386, 1387, 1388, 1389.

SOURCE: ER-1324, 48 FR 8044, Feb. 25, 1983, unless otherwise noted.

§ 203.1 Scope.

This part requires that certain U.S. and foreign direct air carriers waive the passenger liability limits and certain carrier defenses in the Warsaw Convention in accordance with the provisions of CAB Agreement 18900, dated May 13, 1966, and provides that acceptance of authority for, or operations by the carrier in, air transportation shall be considered to act as such a waiver by that carrier.

§ 203.2 Applicability.

This part applies to all direct U.S. and foreign direct air carriers, except for air taxi operators as defined in Part 298 of this chapter that (a) are not commuter air carriers, (b) do not participate in interline agreements, and (c) do not engage in foreign air transportation.

§ 203.3 Filing requirements for adherence to Montreal Agreement.

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Board's Docket Section (Docket 17325) on CAB Form 263 a signed counterpart to CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by Board Order E-23680, dated May 13, 1966, (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Board and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators may comply with this requirement by signing and filing CAB Form 298-A (Rev.) with the Board's Special Authorities Division. Canadian charter air taxi operators registering under Part 294 of this chapter may comply by filing CAB Form 263 with their registration application with the Regulatory Affairs Division, Bureau of International Aviation. CAB Form 263 is set forth as Appendix A to this part. CAB Forms 263 and 298-A (Rev.) can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(Approved by the Office of Management and Budget under control number 3024-0064)

[ER-1324, 48 FR 8044, Feb. 25, 1983, as amended by ER-1338, 48 FR 31013, July 6, 1983]

§ 203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.

(a) As required by the Montreal Agreement, carriers that are otherwise generally required to file tariffs shall file with the Board's Tariff Division a tariff that includes the provisions of the counterpart to CAB Agreement 18900.

(b) As further required by that Agreement, each participating carrier shall include the Agreement's terms as part of its conditions of carriage. The participating carrier shall give each of its passenger [illegible]he notice required by the Montreal Agreement as provided in § 221.175 of this chapter.

(c) Participation in the Montreal Agreement, whether by signing the Agreement, filing a signed counterpart to it under § 203.3, or by operation of law under § 203.5, shall constitute a special agreement between the carrier and its passengers as a condition of carriage that a liability limit of not less than $75,000 (U.S.) shall apply under Article 22(1) of the Warsaw Convention for passenger injury and death. Such participation also constitutes a waiver of the defense under Article 20(1) of the Convention that the carrier was not negligent.

(The reporting provisions contained in paragraph (a) were approved by the Office of Management and Budget under control number 3024-0064.)

[ER-1324, 48 FR 8044, Feb. 25, 1983, as amended by ER-1338, 48 FR 31013, July 6, 1983]

§ 203.5 Compliance as condition on operations in air transportation.

It shall be a condition on the authority of all direct U.S. and foreign carriers to operate in air transportation that they have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900, and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, as required by this subpart. Notwithstanding any failure to file that counterpart and such tariff, any such air carrier or foreign air carrier issued license authority (including exemptions) by the Board or operating in air transportation shall be deemed to have agreed to the provisions of CAB Agreement 18900 as fully as if that air carrier or foreign air carrier had in fact filed a properly executed counterpart to that Agreement and tariff.

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

Subpart A—General Provisions

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204.8 Delay in start of initial service.

AUTHORITY: Secs. 204, 401, 407, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1389.

SOURCE: ER-1180, 45 FR 42599, June 25, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by certificated carriers proposing a substantial change in operations, by applicants for certificate authority, by carriers providing, or proposing to provide essential air transportation, and by commuter carriers serving an eligible point. The Board and its staff may require a carrier to provide additional data if necessary to reach an informed judgment about its fitness.

§ 204.2 Definitions.

As used in this part:

(a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Certificate authority" means authority to provide air transportation granted by the Board in the form of a certificate of public convenience and necessity except authority granted under section 401(d)(5) or 418 of the Act. "Certificated carriers" are those that hold certificate authority.

(c) "Citizen of the United States" means (1) an individual who is a citizen of the United States or one of its possessions, or (2) a partnership of which each member is such an individual, or (3) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(d) "Commuter air carrier" means an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(e) "Eligible point" means any point in the United States (1) to which, on October 24, 1978, any air carrier was providing service pursuant to a certificate issued under section 401 of the Act or was authorized pursuant to such certificate to provide such service, but such service was suspended on October 24, 1978, or (2) which was deleted from a certificate issued under section 401 of the Act between July 1, 1968 and October 24, 1978, and that the Board designates as eligible under Part 270 of this chapter.

(f) "Essential air transportation" is that transportation which the Board has found to be essential under section 419 of the Act.

(g) "Fit" means fit, willing and able to perform the air transportation in question properly and to conform to the provisions of the Act and the rules, regulations and requirements issued under the Act.

(h) "Key personnel" include the directors, President, all Vice Presidents, the Directors or Supervisors of Operations, Maintenance, and Finance and the Chief Pilot of the applicant or commuter air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or commuter air carrier.

(i) "Non-certificated carrier" is an air carrier that does not hold certificate authority.

(j) "Normalized operations" are those which are relatively free of start-up costs and temporary barriers to full scale operations posed by the carrier's limited experience.

(k) "Relevant corporations" are the applicant or air carrier, any predecessor of the applicant or air carrier (*i.e.*, any air carrier in which any directors or principal officers once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant. This includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or commuter air carrier and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier indicated by 25 percent representation on the Board of Directors, participation in policy-making processes, substantial intercompany transactions, or managerial personnel with common responsibilities in both companies.

(l) "Route authority" means certificate or exemption authority to provide service between and among various points except service which has been designated as essential air service. "Route authority" includes authority to provide charter air transportation.

(m) "Substantial change in operations" includes, but is not limited to, changes in operations from charter to scheduled service, cargo to passenger service, or short-haul service to long-haul service, or a large increase in the number of markets served.

(n) "Substantial interest" means 5 percent or more of the outstanding voting stock in the corporation.

[ER-1180, 45 FR 42599, June 25, 1980, as amended by ER-1290, 47 FR 12946, Mar. 26, 1982]

Subpart B—Filing Requirements

§ 204.3 Certificated carriers proposing a change in operations which is not substantial.

Certificated carriers applying for route authority which would not substantially change their operations will be presumed to be fit and need not file any information relating to their fitness to provide the additional services. Such carriers will be found fit on the basis of officially noticeable materials unless the Board concludes, from its own analysis or information submitted by third parties, that such carrier may not be fit to provide the service which it seeks to provide. In that case, the Board may require the applicant carrier to file additional information.

§ 204.4 Certificated carriers proposing a substantial change in operations.

A certificated carrier proposing a substantial change in operations shall file the data set forth in this section. However, if the carrier has previously filed any of the required data with the Board or with another Federal agency from which they are available to the Board, the carrier may instead identify the data and provide a citation for the date and place of filing. Prior to filing any data, the carrier may call the Deputy Director of the Bureau of Domestic Aviation at (202) 673-5830 to ascertain what data required by this section are already available to the Board and need not be included in the filing.

(a) The identity of key personnel who would be employed by the applicant for the proposed operations, including:

(1) Their names and addresses;

(2) The experience, expertise and responsibilities of each;

(3) The citizenship of each;

(4) The amount of the applicant's stock held by each; and

(5) A description of the officerships, directorships, shares of stock (if 5 percent or more of total voting stock outstanding) and other interest each has in any air carrier, foreign air carrier, common carrier or person substantially engaged in the business of aeronautics or person whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, foreign air carrier, common carrier or person substantially engaged in the business of aeronautics.

(b) A description of every formal complaint regarding compliance with the Act or any orders, rules, regulations or requirements issued pursuant to the Act that were lodged in the past five years against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or any person having a substantial interest in any relevant corporation. Such description shall indicate the final disposition or current status of each complaint.

(c) A list of all orders issued in the past 10 years finding any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation guilty of violations of the Act or any order, rule or regulation issued pursuant to the Act.

(d) A description of all actions taken by the FAA in the past 10 years under 14 CFR 13.11, 13.15, 13.16, 13.17, 13.19 or 13.23 of this title against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation. Such description shall include the disposition or current status of each such action.

(e) A description of all charges of unfair or deceptive or anti-competitive business practices or of fraud, felony, or antitrust violation, brought against any relevant corporation, persons having a substantial interest in any relevant corporation, or key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(f) If requested by the Board, a forecast Income Statement for the first normalized year of proposed operations. Such statements shall include estimated revenue block hours (or airborne hours for charter operations) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include an explanation of the derivation of unit costs used in estimating operating expenses and a description of the manner in which costs and revenues are allocated.

(g) A description of the applicant's current fleet of aircraft and its plans for the purchase or lease of additional aircraft, including:

(1) The number of each type of aircraft owned or leased and to be purchased or leased;

(2) The applicant's plans for financing the acquisition or lease of additional aircraft;

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards; and

(4) A narrative description of the carrier's operations after the proposed change.

(Approved by the Office of Management and Budget under control number 3024-0041)

[ER-1180, 45 FR 42599, June 25, 1980, as amended by ER-1180-A, 45 FR 57377, Aug. 28, 1980; ER-1339, 48 FR 31013, July 6, 1983]

§ 204.5 Applicants for certificate authority not currently certificated.

An applicant for certificate authority not currently certificated shall file the data set forth in this section. However, if the applicant has previously filed any of the required data with the Board or with another Federal agency from which they are available to the Board, the applicant may instead identify the data and provide a citation for the date and place of filing. Prior to filing any data, the applicant may call the Deputy Director of the Bureau of Domestic Aviation at (202) 673-5830 to ascertain what data required by this section are already available to the Board and need not be included in the filing

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) A sworn affidavit stating that the applicant is a citizen of the United States.

(e) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise and responsibilities of each;

(3) The amount of the applicant's stock held by each;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 5 percent or more of total voting stock outstanding) and other interests each holds in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(f) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The amount of stock held by each such person and the principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person, or subsidiary of a person having a substantial interest in the applicant is an air carrier, a foreign air carrier, substantially engaged in the business of aeronautics, a common carrier, an officer or director of an air carrier, a foreign air carrier, a person substantially engaged in the business of aeronautics and/or a common carrier and/or a holder of 10 percent or more of total outstanding voting stock of an air carrier, a foreign air carrier, a person substantially engaged in the business of aeronautics and/or a common carrier, the list shall describe such relationship(s).

(g) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(h) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(i) 10K Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission.

(j) If 10K Reports are not filed with the Securities and Exchange Commission and to the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide copies of the following, using generally accepted accounting principles, for the 3 most recent calendar or fiscal years:

(1) The Balance Sheet of all relevant corporations;

(2) The Income Statement of all relevant corporations;

(3) A statement of significant accounting policies of each relevant corporation;

(4) A statement of significant events occuring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) All footnotes applicable to the financial statements.

(k) A list of each action and outstanding judgment for more than $5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation including the amount of each judgment, the party to whom it is payable and how long it has been outstanding.

(l) The number of actions and outstanding judgments of less than $5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation and the total amount owed by each relevant corporation on such judgments.

(m) Such other historic financial information as is requested by the Board.

(n) A description of the applicant's current fleet of aircraft, if any, and its plans for the purchase or lease of additional aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) The applicant's plans for financing the acquisition or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of every formal complaint regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act lodged in the past 5 years against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation. Such descriptions shall indicate the current status or final disposition of each complaint.

(p) A list of all orders issued in the past 10 years finding any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation guilty of violations of the Act or any order, rule or regulation issued pursuant to the Act.

(q) A description of all actions taken in the past 10 years by the FAA under § 13.11, § 13.15, § 13.16, § 13.17, § 13.19 or § 13.23 of this title against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation. Such descriptions shall include the disposition or current status of each such action.

(r) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(s) A statement from the State Public Utilities Commission and the State office handling consumer complaints in each State in which any relevant corporation or any of its key personnel operates regarding their respective consumer complaint records for the preceding 3 years.

(t) An illustrative description of the type of service to be operated if the application is granted, including:

(1) An illustrative service proposal;

(2) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated; and

(3) If the applicant is not currently operating commercial flights or proposes to add new aircraft to its fleet, a forecast Income Statement for the first normal year ending after the initially proposed operations are normalized. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include an explanation of the derivation of unit costs used in estimating operating expenses and a description of the manner in which costs and revenues are allocated.

(u) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations.

(v) A signed counterpart of CAB Agreement 18900 (CAB Form 263) as required by Part 203 of this chapter. That form can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(The reporting requirements contained in paragraphs (a) through (u) were approved by the Office of Management and Budget under control number 3024-0041. The reporting requirements contained in paragraph (v) were approved under control number 3024-0064.)

[ER-1180, 45 FR 42599, June 25, 1980, as amended by ER-1180-A, 45 FR 57377, Aug. 28, 1980; ER-1326, 48 FR 8048, Feb. 25, 1983; ER-1339, 48 FR 31013, July 6, 1983]

§ 204.6 Carriers providing or proposing to provide essential air transportation.

Applicants to provide essential air transportation, and those carriers already providing essential air transportation have been divided into three categories, and are subject to differing data submission requirements as set forth in paragraph (a), (b) and (c) of this section. All carriers may call the Chief, Essential Air Services Division, at (202) 673-5408 to ascertain what information is already available to the Board.

(a) Carriers already serving the affected points and markets that are not planning to exit or that have filed notices to terminate service but have been ordered by the Board to continue operations will be notified by letter that they shall submit the data set forth in this paragraph to the extent such information has not already been obtained by the Board from other sources. However, if the carrier has previously filed any of the required data with the Board or with another Federal agency from which they are available to the Board, the carrier may instead identify the data and provide a citation for the date and place of filing

(1) The name and address of the carrier.

(2) The form of the carrier's organization.

(3) The State law(s) under which the carrier is organized.

(4) A description of all Federal, State and foreign authority under which the carrier has conducted or is conducting transportation operations.

(5) A sworn affidavit stating that the carrier is a citizen of the United States.

(6) The identity of the key personnel which are, or would be, employed by the carrier including their names and addresses, the experience, expertise and responsibilities of each, the amount of the carrier's stock held by each and the citizenship of each.

(7) 10K Reports filed in the past 3 years by any relevant corporation required to file such report with the Securties and Exchange Commission.

(8) If 10K Reports are not filed with the Securities and Exchange Commission and to the extent any relevant corporation has been engaged in any business prior to filing of the application, each carrier shall provide copies of the following, using generally accepted accounting principles, for the 3 most recent calendar or fiscal years:

(i) The Balance Sheet of all relevant corporations;

(ii) The Income Statement of all relevant corporations;

(iii) A statement of significant accounting policies of each relevant corporation;

(iv) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(v) All footnotes applicable to the financial statements.

(9) A list of each action and outstanding judgment for more than $5,000 against any relevant corporation. Such list shall include the amount of each judgment, the party to whom it is payable and how long it has been outstanding.

(10) The number of outstanding actions and judgments of less than $5,000 against each relevant corporation and the total amount owned by each relevant corporation on such judgments.

(11) Such other historic financial information as is requested by the Board.

(12) A description of the current fleet of aircraft, including the following:

(i) The number of each type of aircraft owned or leased; and

(ii) A sworn affidavit stating that each type of aircraft owned and leased has been certified by the FAA and currently complies with all FAA safety standards.

(13) A description of the back-up aircraft capacity available to the applicant, including:

(i) The number and type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.

(14) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.

(15) A list of all orders issued in the past 10 years finding any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation guilty of violations of the Act or any order, rule or regulation issued pursuant to the Act.

(16) A description of all actions taken in the past 10 years by the FAA under § 13.11, § 13.15, § 13.16, § 13.17, § 13.19 or § 13.23 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation including the disposition or current status of each such action.

(17) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(18) A description of every formal complaint regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act lodged against any relevant corporation key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation in the past 5 years. Such description shall indicate the current status or final disposition of each complaint.

(19) A statement from the State Public Utilities Commission and all other State offices handling consumer complaints in each State in which the carrier operates regarding its consumer complaint record for the preceding 3 years.

(20) The carrier's systemwide on-time and completion record for the preceding year.

(21) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(22) A signed counterpart of CAB Agreement 18900 (CAB Form 263 or CAB Form 298-A (Rev.) for air taxi operators), as required by Part 203 of this chapter. Those forms can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(b) Carriers who propose to begin non-subsidized service when the incumbent leaves must file the following information:

(1) All information required under paragraph (a) of this section.

(2) A list of the carrier's subsidiaries, if any. Such list shall include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the carrier.

(3) A description of its plans for the purchase or lease of additional aircraft, including:

(i) The number of each type of aircraft to be purchased or leased;

(ii) The carrier's plans for financing the acquisition or lease of additional aircraft;

(iii) A description of the average number of hours each type of aircraft is currently flown per day; and

(iv) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.

(4) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight and the fares to be charged.

(c) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All information required under paragraphs (a) and (b) of this section.

(2) A forecast Income Statement for the first year following the initiation

of the proposed essential services. Such statement shall include:

(i) Subsidy needed;

(ii) Estimated block hours and revenue miles by type of aircraft;

(iii) Estimated number of passengers and number of tons of mail to be carried;

(iv) Transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service;

(v) An explanation of the derivation of estimates of operating expenses; and

(vi) A description of the manner in which costs and revenues are allocated.

(3) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

(The reporting requirements contained in paragraphs (a) (1) through (21), (b) and (c) were approved by the Office of Management and Budget under control number 3024-0041. The reporting requirements contained in paragraph (a)(22) were approved under control number 3024-0064.)

[ER-1180, 45 FR 42599, June 25, 1980, as amended by ER-1180-A, 45 FR 57377, Aug. 28, 1980; ER-1326, 48 FR 8048, Feb. 25, 1983; ER-1339, 48 FR 31013, July 6, 1983]

§ 204.7 Commuter carriers serving an eligible point but not providing essential air service or applying for certificate authority.

Commuter carriers serving an eligible point but not providing essential air service or applying for certificate authority will be notified by letter that they shall file the data set forth in this section to the extent such information has not already been obtained by the Board from other sources. However, if the carriers has previously filed any of the required data with the Board or with another Federal agency from which they are available to the Board, the carrier may instead identify the data and provide a citation for the date and place of filing.

(a) The name and address of the carrier.

(b) The form of the carrier's organization.

(c) The State law(s) under which the carrier is organized.

(d) A description of all Federal, State and foreign authority under which the carrier has conducted or is conducting transportation operations.

(e) A sworn affidavit stating that the carrier is a citizen of the United States.

(f) The identity of the key personnel which are, or would be, employed by the carrier including their names and addresses, the experience, expertise and responsibilities of each, the amount of carrier's stock held by each, and the citizenship of each.

(g) 10K reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission.

(h) If 10K Reports are not filed with the Securities and Exchange Commission and to the extent any relevant corporation has been engaged in any business prior to the filing of the application, each carrier shall provide copies of the following, using generally accepted accounting principles, for the 3 most recent calendar or fiscal years:

(i) The Balance Sheet of all relevant corporations;

(ii) The Income Statement of all relevant corporations;

(iii) A statement of significant accounting policies of each relevant corporation;

(iv) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(v) All footnotes applicable to the financial statements.

(i) A list of each action and outstanding judgment for more than $5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation. Such list shall include the amount of each judgment, the party to whom it is payable and how long it has been outstanding.

(j) The number of outstanding actions and judgments of less than $5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation and the total amount owed by each relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation on such judgments.

(k) Such other historic financial information as is requested by the Board.

(l) A description of the carrier's current fleet of aircraft, including:

(1) The number of each type of aircraft owned or leased; and

(2) A sworn affidavit stating that each aircraft owned and leased has been certified by the FAA and currently complies with all FAA safety standards.

(m) A list of all orders issued in the past 10 years finding any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation guilty of violations of the Act or any order, rule or regulation issued pursuant to the Act.

(n) A description of all actions taken in the past 10 years by the FAA under 14 CFR 13.11, 13.15, 13.16, 13.17, 13.19 or 13.23 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation. Such descriptions shall include the disposition or current status of each such action.

(o) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation, person having a substantial interest in any relevant corporation or key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(p) A description of every formal complaint regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act lodged in the past 5 years against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation or any person having a substantial interest in any relevant corporation. Such description shall indicate the current status or final disposition of each complaint.

(q) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(r) A signed counterpart of CAB Agreement 18900 (CAB Form 263 or CAB Form 298-A (Rev.)), as required by Part 203 of this chapter. Those forms can be obtained from the Publications Services Division, Civil Aeronautics Board, 1825 Connecticut, Ave., N.W., Washington, D.C. 20428.

(The reporting requirements contained in paragraphs (a) through (q) were approved by the Office of Management and Budget under control number 3024-0041. The reporting requirements contained in paragraph (r) were approved under control number 3024-0064.)

[ER-1180, 45 FR 42599, June 25, 1980, as amended by ER-1180-A, 45 FR 57377, Aug. 28, 1980; ER-1326, 48 FR 26597, June 9, 1983; ER-1339, 48 FR 31013, July 6, 1983]

§ 204.8 Delay in start of initial service.

An air carrier that has not begun initial operations to provide the air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Board, within 2 years of the date of that finding, or that for a period of 2 years from the date of such finding has not provided any air transportation for which that type of finding is required, shall refile data required by § 204.5 or § 204.7, as applicable, at least 90 days before it intends to provide any such air transportation. If there has been no change in data previously submitted, the carrier shall file a statement to that effect signed by one of its officers. The carrier may call the Deputy Director, Bureau of Domestic Aviation (202-673-5830) when involving interstate or overseas air transportation or the Associate Director for Proceedings, Bureau of International Aviation (202-673-5830) when involving foreign air transportation, to find out what data are already available to the Board and need not be included in the re-filing. A carrier to which this section applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Board either decides that the carrier continues to meet that requirement, or finds that the carrier is fit, willing, and able to perform such air transportation. The Board will normally notify the carrier within 60 days of receipt of all required data that either the Board's previous finding continues in effect or further investigation is necessary. The data of the decision of the Board that its previous finding continues in effect will begin a new 2-year period under this section.

(Approved by the Office of Management and Budget under control number 3024-0041)

[ER-1307, 47 FR 52979, Nov. 24, 1982, as amended by ER-1307A, 48 FR 10297, Mar. 11, 1983]

PART 205—AIRCRAFT ACCIDENT LIABILITY INSURANCE

Sec.

205.1 Purpose.
205.2 Applicability.
205.3 Basic requirements.
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205.6 Prohibited exclusions of coverage.
205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.
205.8 Cargo liability disclosure statement.

Authority: Secs. 204, 401, 403, 416, 418, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 757, 771; 92 Stat. 1284, 1732, 49 U.S.C. 1324, 1371, 1372, 1386, 1388, 1389.

Source: ER-1253, 46 FR 52577, Oct. 27, 1981, unless otherwise noted.

§ 205.1 Purpose.

This part contains the rules for aircraft accident liability insurance coverage needed by certain U.S. direct air carriers to obtain or to exercise authority from the Board to operate in interstate, overseas, or foreign air transportation, and by foreign air carriers to operate under permit or other authority in foreign air transportation. It further requires a disclosure statement to shippers about cargo liability limits and insurance coverage for U.S. and foreign direct air carriers.

§ 205.2 Applicability.

These rules apply to all U.S. and foreign direct air carriers, except air taxi operators other than commuter air carriers as defined by § 298.2(f) of this chapter.

[ER-1291, 47 FR 12946, Mar. 26, 1982]

§ 205.3 Basic requirements.

(a) A U.S. or foreign direct air carrier shall not engage in air transportation unless it has in effect aircraft accident liability insurance coverage that meets the requirements of this part for its air carrier or foreign air carrier operations. The minimum amounts of coverage required by this part may be provided either by insurance policies or by self-insurance plans. The currently effective policy of insurance or self-insurance plan shall be available for inspection by the Board at the carrier's principal place of business. The current certificate of insurance or summary of self-insurance plan on file with the Board, as required by § 205.4, shall be available for public inspection at the carrier's principal place of business.

(b) For purposes of this part, a certificate of insurance is one or more certificates showing insurance by one or more insurers (excluding reinsurers) of currently effective and properly endorsed policies of aircraft accident liability insurance in compliance with this part. When more than one such insurer is providing coverage, the limits and types of liability assumed by each insurer (excluding reinsurers) shall be clearly stated in the certificate of insurance. Insurance policies and self-insurance plans named in a certificate of insurance that accompanies an application for initial registration or for operating authority shall become effective not later than the proposed starting date for air carrier operations as shown in the application.

(c) The certificate of insurance shall list the types or classes of aircraft, or the specific aircraft by FAA or foreign government registration number, with respect to which the policy of insurance applies, or shall state that the policy applies to all aircraft owned or operated by the carrier in its air transportation operations. With respect to certificates of insurance that list aircraft by government registration number, the policy or self-insurance plan shall state that, while an aircraft owned or leased by the carrier and declared in the policy is withdrawn from normal use because of its breakdown, repair, or servicing, such insurance as is provided by the policy or plan for that aircraft shall apply also to another aircraft of similar type, horsepower, and seating capacity, whether or not owned by the insured, while temporarily used as a substitute aircraft.

(d) Each certificate of insurance shall be signed by an authorized officer, agent, or other representative of the insurer or the insurance broker.

(e) Insurance coverage to meet the requirements of this part shall be obtained from one or more of the following:

(1) An insurer licensed to issue aircraft accident liability policies in any State, Commonwealth, or Territory of the United States, or in the District of Columbia;

(2) Surplus line insurers named on a current list of such insurers issued and approved by the insurance regulatory authority of any State, Commonwealth, or Territory of the United States or of the District of Columbia; or

(3) Insurers licensed or approved by a foreign government.

This requirement may be waived by the Board in the public interest.

§ 205.4 Filing of evidence of insurance.

(a) A U.S. air carrier shall file a certificate of insurance or summary of a plan for self-insurance with the Board's Special Authorities Division, Bureau of Domestic Aviation. A foreign air carrier shall file such a certificate or summary with the Board's Regulatory Affairs Division, Bureau of International Aviation. If this requirement is met by a self-insurance plan, the carrier shall file the complete self-insurance plan with the Board's Bureau of Carrier Accounts and Audits. Each carrier shall ensure that the evidence filed with the Board of aircraft accident liability coverage is correct at all times. The Board will normally notify the carrier within 20 days of receipt if the coverage or plan does not meet the requirements of this part. The Certificate of Insurance, CAB Form 205-A, for U.S. air carriers and for foreign air carriers, is available from the Board's Publications Services Division, Washington, D.C. 20428. The Board may return the certificate or self-insurance plan to the carrier, if it finds for good cause that such plan or certificate does not show adequate evidence of insurance coverage under this part.

(b) If the coverage is by type or class of aircraft or by specific aircraft, endorsements that add previously unlisted aircraft or aircraft types or classes to coverage, or that delete listed aircraft, types, or classes from coverage, shall be filed with the Board's Special Authorities Division, Bureau of Domestic Aviation, when the insured is a U.S. air carrier, or with the Board's Regulatory Affairs Division, Bureau of International Aviation when the insured is a foreign air carrier, not more than 30 days after the effective date of the endorsements. Aircraft shall not be listed in the carrier's operations specifications with the FAA and shall not be operated unless liability insurance coverage is in force.

(c) When the insured air carrier is a commuter carrier operating in the State of Alaska, certificates and endorsements shall be filed with the Board's Alaska Field Office, 701 C Street, Box 27, Anchorage, Alaska 99513.

(Approved by the Office of Management and Budget under control number 3024-0050)

[ER-1253, 46 FR 52577, Oct. 27, 1981, as amended by ER-1364, 48 FR 46264, Oct. 12, 1983]

§ 205.5 Minimum coverage.

(a) Insurance contracts and self-insurance plans shall provide for payment on behalf of the carrier, within the specific limits of liability in this section, of all sums that the carrier shall become legally obligated to pay as damages, excluding any deductible in the policy, for bodily injury to or death of a person, or for damage to property of others, resulting from the carrier's operation or maintenance of aircraft in air transportation provided under its authority from the Board.

(b) Insurance meeting the requirements of this part for all U.S. or foreign direct air carriers shall be third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence, except that for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, carriers need only maintain coverage of $2,000,000 per involved aircraft for each occurrence.

(c) All U.S. or foreign direct air carriers carrying passengers in air transportation shall in addition to the coverage required in paragraph (a) of this section maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $300,000 for any one passenger, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(d) Notwithstanding paragraphs (b) and (c) of this section, the carrier may be insured for a combined single limit of liability of each occurrence. The combined single-limit coverage must be not less than the combined required minimums for bodily injury and property damage coverage under paragraph (b) of this section, plus the total passenger coverages required under paragraph (c) of this section, for each occurrence. The single-limit liability policy for the required aircraft accident liability coverage may be provided by a single policy or by a combination of primary and excess policies.

(e) The liability coverage shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the carrier. The limits of the liability for the amounts required by this part shall apply separately to each occurrence. Any payment made under the policy or plan because of any one occurrence shall not reduce the coverage for payment of other damages resulting from any other occurrence.

(f) Notwithstanding paragraphs (b) and (c) of this section, Canadian charter air taxi operators registered under Part 294 shall maintain the following coverage:

(1) Canadian charter air taxi operators engaging in charter air service under Part 294 shall maintain third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of $75,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that Canadian charter air taxi operators operating aircraft of more than 30 seats or 7,500 pounds maximum cargo payload capacity, and a maximum authorized takeoff weight on wheels not greater than 35,000 pounds shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Canadian charter air taxi operators engaging in charter air service under Part 294 shall in addition to the coverage required in paragraph (f)(1) of this section maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of $75,000 for any one passenger and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the total number of passenger seats installed in the aircraft.

(3) Coverage under this paragraph may be obtained with a combined single limit as specified in paragraph (d) of this section, applying the amounts of coverage stated in this paragraph.

[ER-1253, 46 FR 52572, Oct. 27, 1981; 46 FR 54500, Nov. 3, 1981, as amended at ER-1253A, 47 FR 12946, Mar. 26, 1982]

§ 205.6 Prohibited exclusions of coverage.

(a) No warranty or exclusion in the policy or plan or in any endorsement or amendment to the policy or plan, nor any violation of the policy or plan by the carrier, shall remove the liability coverage required by this part, except as specifically approved by the Board. This requirement shall not limit the right of insurers to recover from the carrier for amounts paid.

(b) A policy of insurance or a self-insurance plan required by this part shall not contain the following exclusions:

(1) Violation of any safety-related requirement imposed by statute or by rule of a government agency.

(2) Liability assumed by the carrier under an agreement to raise the liability limitations of the Warsaw Convention by signing a counterpart to the agreement of carriers (such as the Montreal Agreement, CAB 18900, as approved by Board Order E-23680, May 13, 1966, agreeing to a limit on the carrier's liability for injury or death of passengers of $75,000 per passenger), or any amendment to such agreement that may be approved by the Board and to which the carrier becomes a party.

§ 205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.

(a) Each policy of aircraft accident liability insurance and plan for self insurance shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to reduce the minimum standards set forth in this part, or to change the extent of coverage, by the insurer or the carrier, nor expire by its own terms, in regard to coverage for the carrier in its common carrier operations in air transportation, until 10 days after written notice by the insurer (in the event of replacement, by the retiring insurer), or by the insurer's representative, or by the carrier, describing the change, to the Board's Special Authorities Division, Bureau of Domestic Aviation, when the insured is a U.S. air carrier, or to the Board's Regulatory Affairs Division, Bureau of International Aviation when the insured is a foreign air carrier, or when the insured is a commuter carrier operating in Alaska, to the Board's Alaska Field Office (Box 27, 701 C Street, Anchorage, Alaska 99513), which 10-day notice period shall start to run from the date such notice is actually received at the Board. For purposes of this part, a policy will not be considered to have expired if the same insurer renews its coverage without reduction in the extent of coverage or amounts of coverage, and without a break in coverage, whether or not a new policy is issued, and notice to the Board is not required in that event. If the coverage being changed is by type or class of aircraft or by specific aircraft, endorsements adding or deleting specific aircraft or types or classes of aircraft, for which prior notice would be required by this paragraph, shall be filed in accordance with § 205.4(b), and prior notice of the change need not be given under this paragraph.

(b) The requirements of this section shall not apply if the policy contains a lesser time period for cancellation in a war risk exclusion. If the war risk exclusion is activated by the insurer, the insurer or its representative shall immediately notify the Board.

§ 205.8 Cargo liability disclosure statement.

Every direct U.S. or foreign air carrier providing air cargo service in air transportation shall give notice in writing to the shipper, when a shipment is accepted, of the existence or absence of cargo liability insurance, and the limits on the extent of its liability, if any. The notice shall be clearly and conspicuously included on or attached to all of its rate sheets and airwaybills.

[ER-1282, 47 FR 16173, Apr. 15, 1982]

PART 206—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: SPECIAL AUTHORIZATIONS

Sec.

206.1 Emergency transportation.
206.2 Omission of stop at route junction points.
206.3 Transportation of newsmen by all-cargo carriers.

§ 206.1 Emergency transportation.

Notwithstanding the provisions of section 401(a) of the Act, and any term, condition or limitation attached to the exercise of the privileges of an air carrier certificate of public convenience and necessity which prohibits an air carrier from engaging in air transportation between any points on its route, the air carrier may carry between such points (a) any person or persons certified by a physician to be in need of immediate air transportation in order to secure emergency medical or surgical treatment together with any necessary attendant or attendants and (b) any medical supplies certified by a physician as requiring immediate air transportation for the protection of life. Air carriers offering to provide this emergency transportation shall file appropriate tariffs pursuant to section 403 of the Act.

(Secs. 204, 416, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

[ER-261, 24 FR 1860, Mar. 14, 1959]

§ 206.2 Omission of stop at route junction points.

Notwithstanding the provisions of section 401(a) of the Act, an air carrier on any flight which is regularly scheduled to be operated between points on two or more of its certificated routes, via a junction point of such routes, may omit a stop at such junction point whenever weather conditions at such junction point otherwise would require the cancellation or postponement of any portion of such flight.

(Secs. 204, 416, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

[ER-246, 24 FR 95, Jan. 6, 1959]

§ 206.3 Transportation of newsmen by all-cargo carriers.

Notwithstanding the provisions of sections 401(a) and 403 of the Act and Part 221 of the Board's economic regulations, an air carrier holding a certificate of public convenience and necessity for the transportation of property and mail only may provide transportation to persons between points in its certificate on regularly scheduled cargo flights for the purpose of collecting data for preparation of feature news, pictorial or like articles provided that:

(a) The transportation is limited to the writer, journalist, or photographer engaged in the preparation of data for use in feature news, pictorial, or like articles which are to appear in newspapers or magazines, or on radio or television programs and which will publicize the regularly scheduled cargo operations of the carrier;

(b) The air carrier shall collect from each person transported the lowest individual adult fare in effect by any carrier authorized to transport persons in regularly scheduled passenger service between the points involved;

(c) The air carrier shall file with the Board's Bureau of Pricing and Domestic Aviation, at least 10 days before commencement of the transportation, a notice setting forth the name and affiliation of the writer, journalist or photographer, the routing to be followed, and the amount of fare to be collected.

(Secs. 204(a) and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743 and 771; 49 U.S.C. 1324 and 1396)

[ER-665, 36 FR 2565, Feb. 6, 1971]

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

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APPENDIX A—ROUTE AIR CARRIER'S SURETY BOND UNDER PART 207 OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 207)
APPENDIX B—STATEMENT OF SUPPORTING INFORMATION

AUTHORITY: Secs. 102, 204, 401, 403, 404, 407, 411, 416, 418, 1002 of Pub. L. 85-726, as amended; 72 Stat. 740, 743, 754, 758, 760, 766, 769, 771, 91 Stat. 1284, 72 Stat. 788; 49 U.S.C. 1302, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1388, 1482, unless otherwise noted.

SOURCE: ER-802, 38 FR 14157, May 30, 1973, unless otherwise noted.

Subpart A—General Provisions

§ 207.1 Definitions.

As used in this part, unless the context otherwise requires:

"All-cargo carrier" means an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d) (1) or (2), which authorizes the carriage of property only or property and mail only.

"Base revenue plane miles" means revenue mileage operated by an air carrier in scheduled services, extra sections, and on-route charter trips or special services.

"Base revenue seat-mile" means the total available revenue seat-miles on flights operated by an air carrier in scheduled services, extra sections, and on-route charter trips or special services.

"Charter flight" means air transportation performed in accordance with § 207.11.

"Charter group" means that body of individuals who shall actually participate in the charter flight.

"Charter organization" means that organization, group, or other entity from whose members (and their immediate families) a charter group is derived.

"Charter trip" means air transportation performed in accordance with § 207.11.

"Combination carrier" means an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d) (1) or (2) which authorizes the carriage of persons, property and mail or persons and property only.

"Islands of the Caribbean" means points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad and Tobago, the Cayman Islands, Aruba, the Leeward and Windward Islands, Barbados, and Curacao.

"Long-term wet lease" means a lease by which the lessor provides both an aircraft and its crew, which either (a) lasts more than 60 days, or (b) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

"Mixed charter" means a charter, the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

"Point" means any airport or place where an aircraft may be landed or taken off, including the area within a 50-mile radius of such airport or place.

"Pro rata charter" means a charter, the cost of which is divided among the passengers transported.

"Single entity charter" means a charter, the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

"Special services" are all services rendered in air transportation which are authorized by section 401(e)(6) of the Act by an air carrier holding a certificate of public convenience and necessity other than (1) services rendered in air transportation over the route or routes designated in its certificate(s), (2) charter services as defined in this section, and (3) services authorized by special exemption under section 416(b) of the Act.

"Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(Secs. 204, 401, 416, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 91 Stat. 1278, 49 U.S.C. 1326, 1371, 1386)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1075, 43 FR 42740, Sept. 21, 1978; ER-1190, 45 FR 53363, Aug. 11, 1980; ER-1248, 46 FR 47766, Sept. 30, 1981]

§ 207.2 Applicability of part.

This part shall apply to all air carriers (other than Alaskan air carriers and air carriers certificated for supplemental air service) who hold currently effective certificates of public convenience and necessity issued by the Board pursuant to section 401 of the Act.

§ 207.3 Scope of authorization.

Charter trips and other special services may be performed by air carriers, subject to the limitations and regulations set forth in this part. The limitations and regulations herein specified as applicable to charter trips shall be applicable to all charter trips regardless of whether the authority to conduct such trips derives from section 401(e)(6) of the Act or the carrier's certificate of public convenience and necessity or from a special or general exemption issued by the Board.

[ER-1190, 45 FR 53363, Aug. 11, 1980]

§ 207.4 Payments to persons receiving commissions.

Payments for a U.S. originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-1126, 44 FR 33053, June 8, 1979]

§ 207.4a Written contracts with charterers.

Every agreement to perform a charter trip, except charters for the Department of Defense, shall be in writing and signed by an authorized representative of the air carrier and the charterer prior to operation of a charter flight: *Provided*, That where execution of a contract prior to commencement of flight is impracticable because the charter has been arranged on short notice, compliance with the provision hereof shall be effected within seven (7) days after commencement of the flight. The written agreement shall include, without limitation:

(a) Date and place of execution of the contract or agreement;

(b) Signature, printed or typed name of each signatory, and official position of each;

(c) Dates of flights and points involved;

(d) Type and capacity of aircraft: Number of passenger seats available or pounds of cargo capacity;

(e) Rates, fares, and charges applicable to the charter trip, including the charter price, live and ferry mileage charges, and layover and other nonflight charges; and

(f) The name and address of either the surety whose bond secures advance charter payments received by the carrier or of the carrier's depository bank to which checks or money orders for advance charter payments are to be made payable as escrow holder, pending completion of the charter trip.

(g) A statement that unless the charterer files a claim with the carrier, or, if he is unavailable, with the surety, within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip (see § 207.17(e)).

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-809, 38 FR 20254, July 30, 1973, as amended by ER-1126, 44 FR 33053, June 8, 1979]

§ 207.7 Charter trips and other special services within the State of Alaska.

An air carrier shall not perform any charter trip or other special service in interstate air commerce within the State of Alaska.

§ 207.8 Notice of proposed special services.

No air carrier shall perform any special service in interstate, overseas or foreign air transportation unless at the time of filing of a tariff applicable to such special service or at the time of filing of an application for a special tariff permission, such air carrier shall have submitted to the Board a statement setting forth a full description of the proposed service and shall have mailed copies thereof to the air carriers authorized by certificates of public convenience and necessity render service to any point designated to receive the proposed special service. The proposed special service shall not be inaugurated if prior to the effective date of the tariff applicable to such special service, or at the time of action on the application for special tariff permission, the Board shall have notified such air carrier that the performance of such special service does not appear to be consistent with the public interest.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.10 Prior authorization of long-term wet leases to foreign air carriers.

(a) A direct air carrier shall not perform any flights for a direct foreign air carrier under a long-term wet lease unless it has obtained a statement of authorization under this section.

(b) Applications for a statement of authorization shall be submitted in letter form in three copies to the Civil Aeronautics Board, addressed to the Director, Bureau of International Aviation. A copy of the application shall also be served on the Federal Aviation Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall describe the purpose and terms of the wet lease agreement. It shall also include documentation to establish the extent to which the country of the lessee's nationality deals with United States air carriers on the basis of reciprocity for similar wet leases, if such wet leases are not subject to a bilateral agreement and:

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country; or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d) Applications for a statement of authorization under this section shall be filed at least 45 calendar days before the date of the first proposed flight.

(e) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application, and a copy shall be served on the applicant air carrier. Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Board is requested to consider.

(f)(1) Unless otherwise ordered by the Board, each application and memorandum filed in response will be available for public inspection at the Regulatory Affairs Division of the Bureau of International Aviation immediately upon filing. Notice of the filing of all applications will be published in the Board's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Board finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

(g) The Board will issue a statement of authorization if it finds that the proposed wet lease is in the public interest. Statements of authorization may be conditioned or limited. In determining the public interest the Board will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party, or should be so covered;

(2) The extent to which the foreign country involved deals with United States carriers on the basis of substantial reciprocity; and

(3) Whether the applicant (lessor) or its agent has previously violated the provisions of this part, or the lessee or its agent has previously violated the provisions of Part 212 or 218 of this chapter.

(h) The Board will publish notice of its actions on applications for statements of authorization in the Status of Charter Applications attachment to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters advising applicants of action taken on their applications.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-1246, 46 FR 47766, Sept. 30, 1981, as amended by ER-1236, 46 FR 43035, Aug. 26, 1981]

§ 207.11 Charter flight limitations.

(a) Passenger charter flights in air transportation shall be limited to the following:

(1) Air transportation pursuant to contracts with the Department of Defense where all of that portion of the capacity configured for passengers of an aircraft has been engaged by the Department;

(2) Air transportation performed on a time, mileage, or trip basis where all or part of the capacity of an aircraft has been engaged by any of the following persons:

(i) By a person for his or her own use, including a direct air carrier or a direct foreign air carrier, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 207.10;

(ii) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(iii) By an overseas military personnel charter operator as defined in Part 372 of this chapter.

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter.

(3) Air transportation performed on a time, mileage, or trip basis by a direct air carrier in accordance with Subpart E of this part.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(2) of this section shall contract and pay for 20 or more seats.

(2) [Reserved]

(3) This section permits the carriage of charter cargo on the main deck or in the belly of a passenger charter flight.

(c) Cargo charter flights in air transportation are permitted without limitation, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 207.10. Charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or individually-waybilled traffic and on flights carrying charter traffic only.

[ER-1190, 45 FR 53363, Aug. 11, 1980, as amended by ER-1248, 46 FR 47767, Sept. 30, 1981; ER-1276, 47 FR 134, Jan. 5, 1982]

§ 207.13 Terms of service.

(a) [Reserved]

(b) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation:

Provided, however, That in the case of a passenger charter for less than the entire capacity of an aircraft, the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, from the passenger charterers not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this paragraph payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(c) Where four or more round trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, one-way passengers shall not be carried except that up to 5 percent of the charter group may be transported one way in each direction, there shall be no intermingling of passengers and each planeload group, or less than planeload group (see § 207.11(a)(3)), shall move as a unit in both directions, except as provided in § 207.14. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the 5-percent limitation aforesaid.

(Secs. 102, 204, 401 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 92 Stat. 1710; 49 U.S.C. 1302, 1324, 1371)

[ER-1145, 44 FR 50595, Aug. 29, 1979, as amended by ER-1276, 47 FR 134, Jan. 5, 1982]

§ 207.14 Substitute transportation in emergencies.

(a) A carrier shall be permitted to transport a passenger on a charter flight with a group other than his own or on a ferry flight (as defined in § 241.03 of this subchapter) under the following circumstances:

(1) [Reserved]

(2) The transportation is for return passage only;

(3) When the passenger is required to return at a different time than his own charter flight due to emergency circumstances beyond the passenger's control; and

(4) The charter group with which the passenger is to travel expresses no objection to his participation in the charter flight.

For the purposes of this paragraph, "emergency circumstances beyond the passenger's control" shall include illness or injury to the passenger or a member of his immediate family; death of a member of the passenger's immediate family; or weather conditions or unforeseeable and unavoidable delays in ground transportation or connecting air transportation.

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1221, 46 FR 28378, May 26, 1981]

§ 207.16 Waiver.

(a) A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

(b) A request for a waiver of any of the provisions of § 207.25 shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.17 Protection of customers' deposits.

(a) Except as provided in paragraph (c) of this section, no air carrier shall perform any charter trip (over than a cargo charter trip) originating in the United States or any overseas military personnel charter trip, as defined in Part 372 of this chapter, nor shall such air carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Board a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with such charter trip to be performed by said carrier, shall be deposited with and maintained by the bank, as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or his agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the charterer (or his agent): *Provided, however,* That where the charter transportation to be performed by a carrier is sold through a travel agent, the agent may be authorized by the carrier to deduct his commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed: *Provided, however,* That the bank may be required by the terms of the agreement to pay over to the carrier, upon the latter's written certification that the outbound segment of a round-trip charter has been completed, a specified portion of such escrowed funds representing the amount of the charter price allocable to such segment.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer or its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties, as provided in the charter contract) which the bank holds with respect to such canceled charter: *Provided, however,* That, in the case of a charter for less than the entire capacity of an aircraft (see § 207.11(c)) escrowed funds shall be turned over to a charterer or its assigns only if the carrier's written certification of cancellation of such charter includes a specific representation that either the charter has been canceled by the carrier or, if the charter has been canceled by the charterer, that the carrier has accepted a substitute charterer.

(4) The bank shall maintain a separate accounting for each charter flight.

(5) As used in this section the term "bank" means a bank, savings and loan institution, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The escrow agreement required under paragraph (a) of this section shall not be effective until approved by the Board. Claims against the escrow may be made only with respect to nonperformance of air transportation.

(c) The carrier may elect, in lieu of furnishing an escrow agreement pursuant to paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed in whole or in part by the carrier pursuant to any contract entered into by such carrier after the execution date of the bond. The amount of such bond shall be unlimited. Claims under the bond may be made only with respect to the nonperformance of air transportation.

(d) The bond permitted by paragraph (c) of this section shall be in the form set forth as Appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholder's rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the carrier is incorporated or in which it maintains its principal place of business. For the purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the route air carrier, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

(e) The bond required by this section shall provide that unless the charterer files a claim with the carrier, or, if he is unavailable, with the surety, within sixty (60) days after cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

(The reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 3024-0011.)

[ER-809, 38 FR 20254, July 30, 1973, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.18 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in 14 CFR Part 254.

[ER-1311, 48 FR 226, Jan. 4, 1983]

§ 207.19 Transportation of persons who may need help during aircraft evacuation.

Except as set forth in Part 121 of the Federal Aviation Regulations (14 CFR Part 121), air carriers shall not limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

(Secs. 102, 204, 403, and 418 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 704, 743, 758, 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1388)

[ER-1126, 44 FR 33054, June 8, 1979]

Subpart B—Provisions Relating to Pro Rata Charters

§ 207.20 Applicability of subpart.

This subpart sets forth the special rules applicable to pro rata charters.

[ER-1190, 45 FR 53363, Aug. 11, 1980]

REQUIREMENTS RELATING TO AIR CARRIERS

§ 207.21 Solicitation and formation of a chartering group.

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

§ 207.22 Pretrip notification and charter contract.

(a) Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Part 207.[1] The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in § 207.45. The carrier shall also require that the charterer and any travel agent involved shall furnish it at least 30 days prior to departure of the first flight the statements of supporting information required in §§ 207.47 and 207.31, respectively, unless the charter has been contracted for within 30 days before the date of departure, in which event the statement and attachments shall be filed with the carrier on the date the charter contract is executed. In the event of a substitution of carriers, the carrier with whom the statements and attachments have been filed may forward them to the substitute carrier, in which case new statements need not be executed.

(b) The carrier shall attach to its copy of the charter contract a certification by an officer of the chartering organization, or other qualified person, that authorizes the person who executes the contract to do so on behalf of the chartering organization. However, certification is not required where the charter is based on employment in one entity, or on employee or student status at a school. If the charter contract is for the return flight of a one-way charter by the same charter organization, a copy of the passenger list (§ 207.45) of the outbound charter shall be attached to the charter contract.

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1221, 46 FR 28378, May 26, 1981]

§ 207.24 Statement of Supporting Information.

Prior to performing a charter flight, the carrier shall execute, and require the travel agent (if any) and the charterer to execute, a Statement of Supporting Information (Appendix B). If a charter contract covers more than one charter flight, only one statement need be filed: *Provided, however,* That separate financial data (see item 13 of statement) shall be filed for each one-way or roundtrip flight. The carrier shall require the charterer to annex to the statement copies of all announcements of the charterer in connection with the charter issued after the contract is signed.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-1221, 46 FR 28378, May 26, 1981, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.25 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 207.13(b), shall be not less than 10 days prior to the departing flight, for a planeload charter, or not less than 30 days prior to the departing flight, if the charter is for less than the entire capacity of an aircraft, pursuant to § 207.11(c).

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 10 days prior to the scheduled departure of a planeload charter, or not later than 30 days prior to the scheduled departure of a less-than-planeload charter, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

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[1] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D.C. 20402. Single copies will be furnished without charge on written requests to the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.

(c) The requirements of this section shall apply to all charter flights scheduled to depart after the effective date hereof: *Provided, however,* That with respect to planeload charter flights scheduled to depart less than 15 days after the effective date hereof, and with respect to less-than-planeload charter flights scheduled to depart less than 30 days after the effective date hereof, requirements hereunder as to advance payments and receipt of written confirmation thereof by the departing carrier, need not be met within the time specified in this section but may be met at any time before flight departure.

(d) Every carrier which has entered into a charter contract covering one-way foreign air transportation from the United States, to be performed in connection with a pro rata charter trip originating in the United States, must obtain, before performing such departing flight, either written confirmation from the returning carrier (as provided in paragraph (b) or (c) of this section, as the case may be), or a waiver granted by the Board pursuant to § 207.16, such waiver to be based either on the grounds set forth in said § 207.16, or on a showing that the arrangements between the chartering organization and the charter participants do not involve the provision of return transportation to the United States.

(e) For the purpose of this section, payment to the carrier's depository bank as designated in the charter contract, shall be deemed payment to the carrier.

(Approved by the Office of Management and Budget under control number 3024-0011)

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, and 1482)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-809, 38 FR 20255, July 30, 1973; ER-1063, 43 FR 36598, Aug. 18, 1978; ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.26 Air carrier to identify enplanements.

The carrier shall make reasonable efforts to assure that no person is enplaned whose name does not appear on the list of passengers supplied by the charterer under § 207.45.

[ER-1221, 46 FR 28378, May 26, 1981]

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 207.31 Statement of Supporting Information.

Travel agents shall execute, and furnish to foreign air carriers, section A of Part II of the Statement of Supporting Information (Appendix B) at such time as required by the carrier to afford it due time for review thereof.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-1221, 46 FR 28378, May 26, 1981, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

REQUIREMENTS RELATING TO CHARTERING ORGANIZATION

§ 207.40 Solicitation of charter participants.

(a) As used in the section, "solicitation of the general public" means:

(1) A solicitation going beyond the bona fide members of an organization (and their immediate families). This includes air transportation services offered by an air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations, and college newspapers shall not be considered advertising in mass media to the extent that;

(i) The advertising is placed in a medium of communication circulated mainly to members of an organization that would be eligible to obtain charter service, and

(ii) The advertising states that the charter is open only to members of the organization referred to in paragraph (a)(1)(i) of this section, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in paragraph (a)(1) (i) of this section: *Provided*, That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

(2) The solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(b) Members of the charter group may be solicited only from among the bona fide members of an organization, club, or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. "Bona fide members" means those members of a charter organization who (1) have not joined the organization merely to participate in the charter as the result of solicitation of the general public; and (2) are members for a minimum of 6 months prior to the starting flight date. The requirement in paragraph (b)(2) of this section is not applicable to:

(i) Students and employees of a single school, and immediate families thereof; or

(ii) Employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof.

(c) Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

(d) A charterer shall not advertise or otherwise solicit its members for any charter until a charter contract has been signed: *Provided, however*, That this prohibition shall not extend to oral inquiries or internal mailings directed to members to determine interest in a charter flight or charter program so long as no fixed price for air transportation is held out. After a charter contract is signed, copies of solicitation material shall be furnished the carrier at the same time it is distributed to members.

(e) Printed solicitation materials shall contain the following notice in boldface, 10-point or larger type:

SOME OF THE FEDERAL RULES THAT PROTECT AGAINST TOUR CHANGES AND LOSS OF PASSENGERS' MONEY IN PUBLICLY-SOLD CHARTERS DO NOT APPLY TO THIS PROGRAM.

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1176, 45 FR 40574, June 16, 1980]

§ 207.41 Passengers on charter flights.

Only bona fide members of the charterer, and their immediate families, may participate as passengers on a charter flight, and the participants must be members of the specific organization or chapter which authorized the charter. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.[3] Where four or more round-trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, intermingling between flights or reforming of planeload groups, or less than planeload groups, (see § 207.11(c)), shall not be permitted, and each group must move as a unit in both directions, except as provided in § 207.14.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.42 Participation of immediate families in charter flights.

(a) The immediate family of any bona fide member of a charter organization may participate in a charter flight.

(b) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, or such member.

§ 207.43 Charter costs.

(a) The costs of charter flights shall be prorated equally among all charter passengers, and no charter passenger shall be allowed free transportation; except that (1) children under 12 years of age may be transported at a charge less than the equally prorated charge; and (2) children under 2 years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

[ER-802, 38 FR 14157, May 30, 1973, as amended at 46 FR 31000, June 12, 1981]

§ 207.44 Statement of charges.

The chartering organization, in any announcements or statements to prospective charter participants giving price per seat, shall state that the seat price is a pro rata share of total charter cost and is subject to increase or decrease depending on the number of participants. All announcements shall separately state the cost of ground arrangements, if any, the cost of air transportation, the administrative expenses of the charterer, and the total cost of the entire trip. All announcements shall also identify the carrier, the number of seats available and the type of aircraft to be used for the charter.

§ 207.45 Passenger lists.

(a) Prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger list as follows:

(1) A bona fide member of the chartering organization who will have been a bona fide member of the chartering organization for at least 6 months prior to the starting flight date. Specify on the passenger list as "(1) member."

(2) The spouse, dependent child or parent of a bona fide member who lives in such member's household.

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[3] Where the charter is based on employment in one entity or student or employee status at a school, records of the corporation, agency or school will suffice to meet the requirements.

Specify on the passenger list as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons employed by a single Government agency, industrial plant, or mercantile company or students and employees of a school or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger lists as "(3) special" or "(3) member" (where participants are from a school group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the outbound and inbound trips must be explained on the list.

(d) Attached to such list must be a certification, signed by a duly authorized representative of the charterer, reading:

> The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a bona fide member of the chartering organization, and will have been a member for at least 6 months prior to the starting flight date, or (2) is a bona fide member of an entity consisting of (*a*) students and employees of a single school, or (*b*) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household.[4]
>
> ____________________
>
> (Signature)

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.46 Application for a charter.

A chartering organization shall make written application to the air carrier, setting forth the number of seats desired, points to be included in the proposed flight or flights, and the dates of departure for each one-way or round-trip flight, and the number of round-trip flights which have been conducted for the organization by any carrier or carriers during the calendar year.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

§ 207.47 Statement of Supporting Information.

Charterers shall execute and file with the foreign air carrier section B of part II of the Statement of Supporting Information (Appendix B) at such time as required by the carrier to afford it due time for review thereof.

(Approved by the Office of Management and Budget under control number 3024-0011)

[ER-1221, 46 FR 28378, May 26, 1981, as amended by ER-1238, 46 FR 43035, Aug. 26, 1981]

Subpart C—Provisions Relating to Single Entity Charters

§ 207.50 Applicability of subpart.

This subpart sets forth the special rules applicable to single entity charters.

§ 207.53 Statement of Supporting Information.

Part I of the Statement of Supporting Information (Appendix B) shall be applicable in the case of single entity charters.

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[4] Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement of entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C. 1001.

[ER-1221, 46 FR 28378, May 26, 1981]

Subpart D—Provisions Relating to Mixed Charters

§ 207.60 Applicable rules.

The rules set forth in Subpart B of this part shall apply in the case of mixed charters.

Subpart E—Direct Sales by Air Carriers

AUTHORITY: Secs. 102, 204, 401, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1386).

SOURCE: ER-1141, 44 FR 50824, Aug. 29, 1979, unless otherwise noted.

§ 207.70 Applicability of subpart.

This subpart applies to direct air carriers that provide charter trips, including trips with ground accommodations and services, directly to individuals.

§ 207.71 Terms of service.

(a) Charter trips under this subpart shall bear only such characteristics as are permitted for Public Charters under Part 380 of this chapter, except:

(1) They may be arranged and sold by a direct air carrier;

(2) There is no minimum contract size; and

(3) Each participant contract shall be signed by or on behalf of the participant not less than 7 days before departure of the outbound flight.

(b) Each direct air carrier operating a charter trip under this subpart shall comply with all the requirements and limitations of Part 380 of this chapter, *Public Charters*, applicable to direct carriers and to charter operators except that:

(1) Those provisions of Part 380 of this chapter relating to the existence of a contract between a charter operator and a direct carrier do not apply;

(2) Section 380.34 does not apply except as specified in paragraph (b)(4) of this section.

(3) If a depository agreement is used, it shall comply with § 380.34a (d) and (f); and

(4) If a security agreement is used, it shall comply with § 380.34 (c) and (d), and:

(i) If no depository agreement is used, protect charter participant deposits (including those for ground accommodations and services) and assure the direct air carrier's contractual and regulatory responsibilities to charter participants in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

(ii) If used in combination with a depository agreement, protect charter participant deposits (including those for ground accommodations and services) and assure the direct air carrier's contractual and regulatory responsibilities to charter participants in the amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000. The liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant.

(c) For the purposes of this section, "charter trips" includes charter tours with or without ground accommodations and services.

§ 207.72 Board powers.

The Board retains, with respect to charters under this subpart, all powers that it has under Part 380 of this chapter with respect to Public Charters.

APPENDIX A—ROUTE AIR CARRIER'S SURETY BOND UNDER PART 207 OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 207)

Know all men by these presents, that we ————(Name of route air carrier) of ————(City), ————(State) as PRINCIPAL (hereinafter called Principal), and ————(Name of Surety) a corporation created and existing under the laws of the State of ————(State) as SURETY (hereinafter called Surety) are held and firmly bound unto the United States of America in an unlimited sum, as required by § 207.17(c) of Part 207, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal, a route air carrier holding a certificate of public convenience and necessity issued under section 401(d)(1) of the Federal Aviation Act, is subject to rules and regulations of the Board relating to security for the protection of charterers of civil aircraft and has elected to file with the Civil Aeronautics Board such a bond as will guarantee to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of the Board's regulations, to be performed, in whole or in part, by such carrier pursuant to contracts entered into by such carrier after the execution date of this bond; and

Whereas, this bond is written to assure compliance by the Principal with rules and regulations of the Board relating to security for the protection of charterers of civil aircraft for charter trips (other than cargo charter trips) originating in the United States or of overseas military personnel charters, and shall inure to the benefit of any and all such charterers to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to such charterers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts made by the Principal while this bond is in effect for the performance of charter trips (other than cargo charter trips) originating in the United States and of overseas military personnel charter trips, than this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charterer shall not exceed the total cost to such charterer for air transportation services in accordance with his contract with the Principal.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder in any specified amount. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ———, 19——, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable thereunder for the payment of any damages hereinbefore described which arise as the result of any contracts for the performance of air transportation services made by the Principal after the termination of this bond becomes effective, as herein provided, but said termination shall not affect the liability of the Surety hereunder for the payment of such damages arising as the result of contracts for the performance of air transportation services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charterer who shall within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by this bond give written notice of the claim to the route air carrier, or, if he is unavailable, to the Surety, and all liability on the bond for such charter trip shall automatically terminate sixty (60) days after the cancellation date thereof except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the —— day of ———, 19——.

PRINCIPAL SURETY
Name——————— Name———————(SEAL)
By——————— By———————
(Signature and Title) (Signature and Title)
Witness——————— Witness———————

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 207.17(d) of Part 207.

[ER-809, 38 FR 20255, July 30, 1973]

APPENDIX B—STATEMENT OF SUPPORTING INFORMATION[1]

Part I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier:

---

[1] This must be retained by the air carrier for 2 years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

____

2. Commencement date(s) of proposed flight(s):

____

(a) Going ________________
(b) Returning ________________

3. Points to be included in proposed flight(s)

____

(a) From ________ to ________
(b) Returning from ________ to ________

(c) Other stops required by charterer: ____
4. (a) Type of aircraft to be used: ________
(b) Seating capacity: ________
(c) Number of persons to be transported:

____

5. Total charter price:

____

6. (a) Has the carrier paid, or does it contemplate payment of any commissions, direct or indirect, in connection with the proposed flight? Yes [ ] No [ ]

(b) If "yes" give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation.

____

____

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes [ ] No [ ]

(b) If "yes" describe services or functions:

____

____

8. Name and address of charterer:

____

9. If charter is single entity, indicate purpose of flight:

____

10. On what date was the charter contract executed?

____

11. If the charter is pro rata, has a copy of Part 207 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes [ ] No [ ]

Part II—To be completed for pro rata or mixed charters only.

Section A—To be supplied by travel agent, or where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements).

1. What specific services have been or will be provided by agent to charterer on a group basis?

____

____

2. What specific services have been or will be provided by agent to individual participants in the proposed charter?

____

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any members of the chartering organization in relation either to the proposed charter flight or any land tour? Yes [ ] No [ ]

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes [ ] No [ ]

If answer is "yes" explain:

____

____

WARRANTY[3]

I, ________________ (Name) represent and warrant that I have acted with regard

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[3] Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse * * * to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board * * *, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum * * * shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49 U.S.C.

Whoever, in any manner within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be

Continued

to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 207 of the Board's economic regulations.

(Date)

(Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).)

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes:

2. What activities are sponsored by the chartering organization?

3. When was the organization founded?

4. Qualification or requirements for membership in organization and membership fee, if any:

5. Has there been any reference to prospective charter flights in soliciting new members for the charter organization?
Yes [ ] No [ ]

6. State where a list of members is available for inspection.

7. Attach list of prospective passengers (including "standbys" and one-way passengers designated as such), showing for each: (a) Name and address; (b) relationship of such person to chartering organization, i.e., member, spouse, dependent child, parent or "special" (a person whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver); (c) if such person is related to a member who is not a prospective passenger, the member's name and address; and (d) date member joined or last renewed a lapsed membership.

(NOTE: This is a list of prospective passengers and does not necessarily have to represent the passengers actually to be carried. The list is to be amended, if passengers are dropped or added before flights and the certification required by § 207.45 must be attached to the list.)

8. What are requirements for participation in charter?

9. How were prospective participants for charter solicited (attach any solicitation material)?

10. Will there be any participants in the charter flight other than (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group residing in the same household with the member?
Yes [ ] No [ ]

11. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than 6 months prior to flight date?[9]
Yes [ ] No [ ].

If answer is "yes", give names of participants who will not have been members for 6 months:

12. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration, and scope of activity:

13. Estimated receipts: ———— (Pro rata charge) × ———— (Number of passengers) = $———— (Estimated receipts from charter)

Estimated receipts from other sources, if any:

Explain:

(a) Total receipts: $

Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

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fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C. 1001.

[9] Not applicable to school charters, nor to charters limited to employees of a single Government agency, industrial plant, or mercantile company.

Item	*Amount*	*Payable to*

(b) Total expenditures:

$——— ————————————

Explain any difference between (a) and (b):

14. Are any of the expenses included in Item 13 above, to be paid to any members of the chartering organization? ————
Yes [ ] No [ ]
If "yes" state how much, to whom and for what services:

15. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes [ ] No [ ]
If "yes" explain fully: ————

16. Will any person in the group (except children under 2 years) be transported without charge? Yes [ ] No [ ]

17. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under 12 years old? Yes [ ] No [ ]

18. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction:

19. If four or more round trips are contracted for, will each group move as a unit in both directions? Yes [ ] No [ ]

20. If charters have been performed for organization during past 5 years, give dates and name of carrier performing charters:

21. Has a copy of Part 207 "Charter Trips and Special Services" of the Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes [ ] No [ ]

22. Attach copies of all announcements of the chartering organization in connection with the charter issued after the charter contract is signed.

WARRANTY OF CHARTERER[4]

I, ———————— (Name) and ————————(Name) represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operations, in a manner consistent with Part 207 of the Board's economic regulations. I (we) further represent and warrant that the charterer has not offered charter flights simultaneously with the solicitation of membership in the chartering organization in any mass media advertising or notice or through direct mailing or public posters. I (we) further represent and warrant that all charter participants have been informed of eligibility and cost requirements of Part 207 and that a flight may be canceled if ineligible participants are included.

(Date) ————————

————————————————
(Signature—person within organization in charge of charter arrangements)

————————————————
(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by school official not directly involved in charter.)

WARRANTY OF AIR CARRIER[5]

To the best of my knowledge and belief all the information presented in this state-

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[4] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18 U.S.C. 1001.

[5] Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse * * * to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board * * *, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum * * * shall be

Continued

ment, including but not limited to, those parts warranted by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 207 of the Board's economic regulations.

(Date) ————————

————————————————

(Signature and title of authorized official of air carrier)

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both. Title 18 U.S.C. 1001.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-1126, 44 FR 33054, June 8, 1979. Redesignated by ER-1221, 46 FR 28378, May 26, 1981]

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN CHARTER AIR TRANSPORTATION

Subpart A—General Provisions

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208.3 Definitions.
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LIABILITY INSURANCE REQUIREMENTS; WAIVER OF WARSAW CONVENTION LIABILITY LIMITS

208.10 Applicability of liability insurance requirements.
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208.40 Protection of customers' deposits.

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208.150 Military backhaul exemption.

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REQUIREMENTS RELATING TO AIR CARRIERS

208.200a Solicitation and formation of a chartering group.
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208.202a Statement of supporting information.
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208.202c Air carrier to identify enplanements.

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deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49 U.S.C. 1472(e).

Sec.

REQUIREMENTS RELATING TO TRAVEL AGENTS

208.203 [Reserved]
208.204 Statement of supporting information.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

208.210 Solicitation of charter participants.
208.211 Passengers on charter flights.
208.212 Participation of immediate families in charter flights.
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208.214 Statements of charges.
208.215 Passenger lists.
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208.217 Statement of supporting information.

Subpart D—Provisions Relating to Single Entity Charters

208.300 Applicability of subpart.
208.301 Terms of service.
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Subpart E—Provisions Relating to Mixed Charters

208.400 Applicable rules.

Subpart F—Direct Sales by Air Carriers

208.500 Applicability of subpart.
208.501 Terms of service.
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APPENDIX A—SUPPLEMENTAL AIR CARRIERS' SURETY BOND UNDER PART 208 OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 208)
APPENDIX B—STATEMENT OF SUPPORTING INFORMATION

AUTHORITY: Secs. 101(3), 102, 204, 401, 403, 404, 407, 411, 416, 417, 1002, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 758, 760, 766, 769, 771, 788; 76 Stat. 145; 49 U.S.C. 1301, 1302, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1387, 1482.

SOURCE: ER-803, 38 FR 14272, May 31, 1973, unless otherwise noted.

Subpart A—General Provisions

§ 208.1 Applicability.

This part contains terms, conditions, and limitations on the operating authority of supplemental air carriers, including substantive regulations implementing paragraphs (1), (2), and (3) of section 401(n) of the Act. The requirements of this part shall constitute terms, conditions, and limitations attached to certificates issued pursuant to section 401(d)(3) of the Act. The requirements shall also attach to special operating authorizations issued under section 417 or to exemptions issued under section 416 of the Act.

§ 208.2 Separability.

If any provision of this part or the application thereof to any air transportation, person, class of persons, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§ 208.3 Definitions.

For the purposes of this part:

(a) "Filing" shall mean filing in compliance with § 302.3(a) of this chapter except that provisions in this part which require filing with Board offices other than the Docket Section shall be controlling.

(b) "Supplemental air carrier" means an air carrier holding a certificate issued under section 401(d)(3) of the Act, or a special operating authorization issued under section 417 of the Act.

(c) "Supplemental air transportation" means charter flights in air transportation performed pursuant to a certificate of public convenience and necessity issued under section 401(d)(3) of the Act (1) authorizing the holder to engage in supplemental air transportation of persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia (exclusive of air transportation within the State of Alaska) or in foreign or overseas supplemental air transportation, or (2) authorizing the holder to engage in supplemental air transportation of persons and their personal baggage between any point in any State of the United States or the District of Columbia, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

(d) "Agreement" means any oral or written agreement, contract, understanding, or arrangement, and any amendment, revision, modification, renewal, extension, cancellation, or termination thereof.

(e) "Cargo agent" means any person (other than a supplemental air carrier or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the economic regulations of the Board) who for compensation or profit (1) solicits, obtains, receives, or furnishes directly or indirectly, property or consolidated shipments of property for transportation upon the aircraft of supplemental air carriers; or (2) procures or arranges for air transportation of property or consolidated shipments of property upon aircraft of a supplemental air carrier by charter, lease, or any other arrangement.

(f) [Reserved]

(g) "Ticket agent" means any person (other than a supplemental air carrier or one of its bona fide regular employees) who for compensation or profit (1) solicits, obtains, receives, or furnishes directly or indirectly, passengers or groups of passengers for transportation upon the aircraft of a supplemental air carrier; or (2) procures or arranges for air transportation of passengers or groups of passengers upon aircraft of a supplemental air carrier by charter, lease, or any other arrangement.

(h) "Pro rata charter" means a charter, the cost of which is divided among the passengers transported.

(i) "Single entity charter" means a charter, the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(j) "Mixed charter" means a charter, the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(k) "Person" means any individual, firm, association, partnership, or corporation.

(l) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(m) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(n) "Charter organization" means that organization, group, or other entity from whose members (and their immediate families) a charter group is derived.

(o)-(r) [Reserved]

(s) "Charter flight" means air transportation performed by supplemental air carriers in accordance with § 208.6.

(t) "Substitute service" means the performance by an air carrier of foreign or overseas air transportation, or air transportation between the 48 contiguous States, on the one hand, and the State of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligations to perform such air transportation for the Department of Defense.

(u) "Indirect air carrier" means any citizen of the United States authorized to engage indirectly in air transportation.

(v) "Net worth" means the net stockholder equity as specified in form 41 balance sheet account 2995 of the "Uniform System of Accounts and Reports."

(w) "Long-term wet lease" means a lease by which the lessor provides both an aircraft and its crew, which either (1) lasts more than 60 days, or (2) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1096, 44 FR 6645, Feb. 1, 1979; ER-1249, 46 FR 47767, Sept. 30, 1981]

§ 208.3a Waiver.

(a) A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

(b) A request for a waiver of any of the provisions of § 208.202b shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1340, 48 FR 31013, July 6, 1983]

§ 208.4 [Reserved]

§ 208.5 Prior authorization of long-term wet leases to foreign air carriers.

(a) A direct air carrier shall not perform any flights for a direct foreign air carrier under a long-term wet lease unless it has obtained a statement of authorization under this section.

(b) Applications for a statement of authorization shall be submitted in letter form in three copies to the Civil Aeronautics Board, addressed to the Director, Bureau of International Aviation. A copy of the application shall also be served on the Federal Aviation Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall describe the purpose and terms of the wet lease agreement. It shall also include documentation to establish the extent to which the country of the lessee's nationality deals with United States air carriers on the basis of reciprocity for similar wet leases, if such wet leases are not subject to a bilateral agreement and:

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country; or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d) Applications for a statement of authorization under this section shall be filed at least 45 calendar days before the date of the first proposed flight.

(e) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application, and a copy shall be served on the applicant air carrier. Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Board is requested to consider.

(f)(1) Unless otherwise ordered by the Board, each application and memorandum filed in response will be available for public inspection at the Regulatory Affairs Division of the Bureau of International Aviation immediately upon filing. Notice of the filing of all applications will be published in the Board's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Board finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

(g) The Board will issue a statement of authorization if it finds that the proposed wet lease is in the public interest. Statements of authorization may be conditioned or limited. In determining the public interest the Board will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party, or should be so covered;

(2) The extent to which the foreign country involved deals with United States carriers on the basis of substantial reciprocity; and

(3) Whether the applicant (lessor) or its agent has previously violated the

provisions of this part, or the lessee or its agent has previously violated the provisions of Part 212 or 218 of this chapter.

(h) The Board will publish notice of its actions on applications for statements of authorization in the Status of Charter Applications attachment to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters advising applicants of action taken on their applications.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-1249, 46 FR 47767, Sept. 30, 1981, as amended by ER-1340, 48 FR 31013, July 6, 1983]

§ 208.6 Charter flight limitations.

(a) Passenger charter flights in air transportation shall be limited to the following:

(1) Air transportation pursuant to contracts with the Department of Defense where all of that portion of the capacity configured for passengers of an aircraft has been engaged by the Department;

(2) Air transportation performed on a time, mileage, or trip basis where all or part of the capacity of an aircraft has been engaged by any of the following persons:

(i) By a person for his or her own use, including a direct air carrier or a direct foreign air carrier, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 208.5.

(ii) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(iii) By an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter.

(3) Air transportation performed on a time, mileage, or trip basis by a direct air carrier in accordance with Subpart F of this part.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(2) of this section shall contract and pay for 20 or more seats.

(2) [Reserved]

(3) This section permits the carriage of charter cargo on the main desk or in the belly of a passenger charter flight.

(c) Cargo charter flights in air transportation are permitted without limitation, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 208.5. Charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or individually-waybilled traffic and on flights carrying charter traffic only.

[ER-1190, 45 FR 53363, Aug. 11, 1980, as amended by ER-1249, 46 FR 47768, Sept. 30, 1981; ER-1277, 47 FR 134, Jan 5, 1982]

LIABILITY INSURANCE REQUIREMENTS; WAIVER OF WARSAW CONVENTION LIABILITY LIMITS

§ 208.10 Applicability of liability insurance requirements.

No charter air carrier shall engage in air transportation unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of Part 205 of this chapter.

[ER-1254, 46 FR 52383, Oct. 27, 1981]

§ 208.11 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a certificate or other authority authorizing air transportation that the holder have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263), and comply with all other requirements in Part 203 of this chapter. That form can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(Approved by the Office of Management and Budget under control number 3024-0064)

[ER-1327, 48 FR 8048, Feb. 25, 1983, as amended by ER-1340, 48 FR 31013, July 6, 1983]

MINIMUM EXTENT OF SERVICE

§ 208.25 Minimum service requirements.

Each supplemental air carrier shall perform services authorized by its certificate or authority to engage in supplemental air transportation for at least 500 hours of revenue flight in any two consecutive calendar quarters. Failure to perform such minimum services will be deemed to constitute a prima facie case for suspension of the carrier's operating authority pursuant to the provisions of section 401(n)(5) of the Act: *Provided*, That the carrier may, within 15 days after the end of the two consecutive calendar quarters in which such failure occurred, show unusual circumstances constituting good cause why its operating authority should not be suspended.

OPERATIONS

§ 208.30 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in 14 CFR Part 254.

[ER-1312, 48 FR 227, Jan. 4, 1983; 48 FR 3584, Jan. 26, 1983]

§ 208.31 Transportation of persons who may need help during aircraft evacuation.

Except as set forth in Part 121 of the Federal Aviation Regulations (14 CFR Part 121), air carriers shall not limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

[ER-1172, 44 FR 33054, June 8, 1979]

§ 208.31a Written agreements with ticket agents.

Each agreement between a supplemental air carrier and any ticket or cargo agent shall be reduced to writing and signed by all the parties thereto, if it relates to any of the following subjects:

(a) The furnishing of persons or property for transportation;

(b) The arranging for flights for the accommodation of persons or property;

(c) The solicitation or generation of passenger or cargo traffic to be transported;

(d) The charter or lease of aircraft.

§ 208.31b Written contract with charterers.

Every agreement to perform a charter trip, except charters for the Department of Defense, shall be in writing and signed by an authorized representative of the supplemental air carrier and the charterer prior to operation of a charter flight: *Provided*, That where execution of a contract prior to commencement of flight is impracticable because the charter has been arranged on short notice, compliance with the provision hereof shall be effected within seven (7) days after commencement of the flight. The written agreement shall include without limitation:

(a) Date and place of execution of the contract or agreement;

(b) Signature, printed or typed name of each signatory, and official position of each;

(c) Dates of flights and points involved;

(d) Type and capacity of aircraft: Number of passenger seats available or pounds of cargo capacity;

(e) Rates, fares, and charges applicable to the charter trip, including the charter price, live and ferry mileage charges, and layover and other non-flight charges;

(f) The name and address of either the surety whose bond secures advance charter payments received by the carrier or of the carrier's depository bank to which checks or money orders for advance charter payments are to be made payable, as escrow holder pending completion of the charter trip; and

(g) A statement that unless the charterer files a claim with the carrier, or, if he is unavailable, with the surety, within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the Surety shall be released from all liability under the bond to such charterer for such charter trip. (see § 208.40(e)).

[ER-810, 38 FR 20256, July 30, 1973, as amended by ER-1127, 44 FR 33054, June 8, 1979; 44 FR 40884, July 13, 1979]

§ 208.32 Terms of service.

(a)-(b) [Reserved]

(c) Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§ 208.32a, 208.33, and 208.33a, where applicable, concerning insurance and substitute transportation.

(e) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation:

Provided, however, That in the case of a passenger charter for less than the entire capacity of an aircraft, the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, from the passenger charterers not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this paragraph, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(f) Where four or more round trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, one-way passengers shall not be carried except that up to 5 percent of the charter group may be transported one way in each direction, there shall be no intermingling of passengers and each planeload group, or less than planeload group (see § 208.6(a)(3)), shall move as a unit in both directions, except as provided in § 208.36. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the 5-percent limitation aforesaid.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1127, 44 FR 33054, June 8, 1979; ER-1145, 44 FR 50597, Aug. 29, 1979; ER-1277, 47 FR 134, Jan. 5, 1982; ER-1286, 47 FR 9819, Mar. 8, 1982]

§ 208.32a Flight delays and substitute air transportation (foreign).

Charter air carriers shall comply with the following requirements for passenger service in foreign air transportation. These requirements shall be without prejudice and in addition to any other rights or remedies of passengers under applicable law:

(a) *Substitute air transportation.* (1) On all charter flights, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the 48th hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this paragraph.

(2) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than 48 hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other carrier or foreign air carrier.

(3) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of 48 hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights

and the chartered air carrier shall pay the cost of such air transportation to the substitute air carrier or foreign air carrier.

(4) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this paragraph, periods of delay caused by the prohibition of flights to or from the airport of departure because of weather or other operational conditions affecting such airport shall be excluded if, and while, the air carrier has available an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness.

(b) *Incidental expenses.*[3] (1) On the return leg of a charter flight bound from a point outside the country where the charter originated and is to terminate, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the 6th hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this paragraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares. In the case of charter flights bound to or from the United States on the return leg, "country" as used in this paragraph means the 48 contiguous States of the United States.

(2) Such payments shall be made at the rate of $16 for each full 24-hour period of delay following the scheduled departure time. However, the sum of $8 shall be paid for each passenger delayed 6 hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8 shall be paid for each passenger delayed in installments of $4 for the first and second succeeding 6-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4 for each further 6-hour period of delay, or any fractional part thereof: *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of paragraph (a) of this section.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1127, 44 FR 33055, June 8, 1979]

§ 208.33 Flight delays and substitute air transportation (interstate and overseas).

Charter air carriers shall comply with the following requirements for passenger service in interstate and overseas transportation. These requirements shall be without prejudice and in addition to any other rights or remedies of passengers under applicable law:

(a) In case of flight delays of more than 6 hours beyond the departure time stated in the charter contract or 4 hours beyond the time of departure stated on an individual flight ticket, the carrier, upon request and at the passenger's or charterer's option (or in case of the engagement by one charterer of less than the capacity of an aircraft, at the option of any one charterer), must provide alternative air transportation at no additional cost to the passenger or charterer, or immediately refund the full value of the unused ticket or the unperformed charter contract.

(b) In case of additional flight delays en route exceeding 6 hours for charter flights or 2 hours for individually ticketed flights, the carrier must, upon request and at the passenger's or charterer's option (or in case of the engagement by one charterer of less than the capacity of an aircraft, at the option of any one charterer), furnish alternative transportation to the specified destination, or immediately refund the full value of unperformed transportation. The en route delays shall be calculated without inclusion of any delay at departure but all additional delays at intermediate stops en route shall be added up in determining whether the limit of delay has been reached.

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[3] Although the requirements with respect to providing incidental expenses are made expressly applicable only to the return leg of a charter flight, the air carriers are expected in the case of delay in departure of the originating leg of a flight, to furnish such incidental expenses to charter passengers whose homes are not located within a reasonable distance from the point of origination of the charter.

(c) In case of flight cancellations or flight delays, refunds shall be paid immediately upon presentation of an unused flight coupon or upon demand of the charterer or his representative (or in case of the engagement by one charterer of less than the capacity of an aircraft, upon demand of any one charterer or his representative) to the air carrier or its agent.

(d) The requirements in paragraphs (a), (b), and (c) of this section for immediate refunds or alternative transportation shall not apply to the extent that there is an unavoidable delay due solely to weather.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1127, 44 FR 33055, June 8, 1979]

§ 208.33a Substitution or subcontracting.

Supplemental air carriers may subcontract the performance of services which they have contracted to perform only to air carriers authorized by the Board to perform such services.

§§ 208.34–208.35 [Reserved]

§ 208.36 Substitute transportation in emergencies.

(a) A carrier shall be permitted to transport a passenger on a charter flight with a group other than his own or on a ferry flight (as defined in § 241.03 of this subchapter) under the following circumstances:

(1) [Reserved]

(2) The transportation is for return passage only;

(3) When the passenger is required to return at a different time than his own charter flight due to emergency circumstances beyond the passenger's control; and

(4) The charter group with which the passenger is to travel expresses no objection to his participation in the charter flight.

For the purposes of this paragraph, "emergency circumstances beyond the passenger's control" shall include illness or injury to the passenger or a member of his immediate family; death of a member of the passenger's immediate family; or weather conditions or unforeseeable and unavoidable delays in ground transportation or connecting air transportation.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1222, 46 FR 28379, May 26, 1981]

§ 208.37 Exemption.

Charter air carriers are hereby exempted from section 401(n)(4) of the Act.

[ER-1142, 44 FR 50825, Aug. 30, 1979]

§ 208.38 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any charter air carrier, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

[ER-1142, 44 FR 50825, Aug. 30, 1979]

PROTECTION OF CUSTOMERS' DEPOSITS

§ 208.40 Protection of customers' deposits.

(a) Except as provided in paragraph (c) of this section, no supplemental air carrier shall perform any air transportation services (other than a cargo charter trip) originating in the United States or any overseas military personnel charter trips, as defined in Part 372 of this chapter, nor shall such air carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Board a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with any such charter trip to be performed by said carrier, shall be deposited with and maintained by the bank as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or his agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the charterer (or his agent): *Provided, however,* That where the charter transportation to be performed by a carrier is sold through a travel agent the agent may be authorized by the carrier to deduct his commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed: *Provided, however,* That the bank may be required by the terms of the agreement to pay over to the carrier a specified portion of such escrowed funds, as payment for the performance of the outbound segment of a round trip charter upon written certification by the carrier that such segment has been completed.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer or its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties as provided in the charter contract) which the bank holds with respect to such canceled charter: *Provided, however,* That, in the case of a charter for less than the entire capacity of an aircraft (see § 208.6 (c)) escrowed funds shall be turned over to a charterer or its assigns only if the carrier's written certification of cancellation of such charter includes a specific representation that either the charter has been canceled by the carrier or, if the charter has been canceled by the charterer, that the carrier has accepted a substitute charterer.

(4) The bank shall maintain a separate accounting for each charter flight.

(5) As used in this section the term "bank" means a bank, savings and loan institution, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The escrow agreement required under paragraph (a) of this section shall not be effective until approved by the Board. Claims against the escrow may be made only with respect to nonperformance of air transportation.

(c) The carrier may elect, in lieu of furnishing an escrow agreement pursuant to paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government the performance of all air transportation services (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed, in whole or in part, by the carrier pursuant to contracts entered into by such carrier after the execution date of the bond. The amount of such bond shall be unlimited. Claims under the bond may be made only with respect to the nonperformance of air transportation.

(d) The bond permitted by paragraph (a) of this section shall be in the form set forth as Appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the carrier is incorporated or in which it maintains its principal place of business. For the purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

(e) The bond required by this section shall provide that unless the charterer files a claim with the carrier, or, if he is unavailable, with the surety, within sixty (60) days after cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-810, 38 FR 20256, July 30, 1973, as amended by ER-1340, 48 FR 31013, July 6, 1983]

Subpart B—Provisions Relating to Military Charters

§ 208.100 Applicability of subpart.

This subpart sets forth the special rules applicable to military charters.

§ 208.101 [Reserved]

§ 208.102 Substitute service.

Supplemental air carriers are authorized to provide "substitute service" as defined in this part, subject to the provisions of Part 288 of this chapter.

§ 208.103 Terms of service.

The provisions of § 208.32(d) shall apply to charters under this subpart.

[ER-1127, 44 FR 33055, June 8, 1979]

Subpart B1—Provisions Relating to Military Backhaul Charters

§ 208.150 Military backhaul exemption.

Subject to the provisions of this part and all other applicable rules, regulations, conditions, or requirements, supplemental air carriers are hereby exempted from the provisions of section 401 of the Act to the extent necessary to permit them to engage in overseas or foreign "supplemental air transportation" on the reverse leg of a charter performed in the opposite direction under a contract with the Department of Defense calling for one-way service.

Subpart C—Provisions Relating to Pro Rata Charters

§ 208.200 Applicability of subpart.

This subpart sets forth the special rules applicable to pro rata charters.

REQUIREMENTS RELATING TO AIR CARRIERS

§ 208.200a Solicitation and formation of a chartering group.

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

§ 208.201 Pretrip notification and charter contract.

(a) Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Part 208.[3] The charter contract shall in-

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[3] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D.C. 20402. Single

Continued

clude a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in § 208.215. The carrier shall also require that the charterer and any travel agent involved shall furnish it at least 30 days prior to departure of the first flight the statements of supporting information required in §§ 208.217 and 208.204, respectively, unless the charter has been contracted for within 30 days before the date of departure, in which event the statement and attachments shall be filed with the carrier on the date the charter contract is executed. In the event of a substitution of carriers, the carrier with whom the statements and attachments have been filed may forward them to the substitute carrier, in which case new statements need not be executed.

(b) The carrier shall attach to its copy of the charter contract a certification by an officer of the chartering organization, or other qualified person, that authorizes the person who executes the contract to so do on behalf of the chartering organization. However, certification is not required where the charter is based on employment in one entity, or on employee or student status at a school. If the charter contract is for the return flight of a one-way charter by the same charter organization, a copy of the passenger list (§ 208.215) of the outbound charter shall be attached to the charter contract.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1222, 46 FR 28379, May 26, 1981]

§ 208.202 [Reserved]

§ 208.202a Statement of supporting information.

Prior to performing a charter flight, the carrier shall execute, and require the travel agent (if any) and the charterer to execute a Statement of Supporting Information (Appendix B). If a charter contract covers more than one charter flight, only one statement need be filed: *Provided, however,* That separate financial data (see item 13 of statement) shall be filed for each one-way or round-trip flight. The carrier shall require the charterer to annex to the statement copies of all announcements of the charterer in connection with the charter issued after the contract is signed.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-1222, 46 FR 28379, May 26, 1981, as amended by ER-1340, 48 FR 31013, July 6, 1983]

§ 208.202b Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 208.32(e), shall be not less than 10 days prior to the departing flight.

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 10 days prior to the scheduled departure, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning

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copies will be furnished without charge on written request to the Publications Service Section, Civil Aeronautics Board, Washington, D.C. 20428.

flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

(c) The requirements of this section shall apply to all charter flights scheduled to depart after the effective date hereof: *Provided, however,* That with respect to planeload charter flights scheduled to depart less than 15 days after the effective date hereof, and with respect to less-than-planeload charter flights scheduled to depart less than 30 days after the effective date hereof, requirements hereunder as to advance payments and receipt of written confirmation thereof by the departing carrier, need not be met within the time specified in this section but may be met at any time before flight departure.

(d) Every carrier which has entered into a charter contract covering only one-way foreign air transportation from the United States, to be performed in connection with a pro rata charter trip originating in the United States, must obtain, before performing such departing flight, either written confirmation from the returning carrier (as provided in paragraph (b) or (c) of this section, as the case may be), or a waiver granted by the Board pursuant to § 208.3a, such waiver to be based either on the grounds set forth in said § 208.3a, or on a showing that the arrangements between the chartering organization and the charter participants do not involve the provision of return transportation to the United States.

(e) For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-810, 38 FR 20257, July 30, 1973; ER-1064, 43 FR 36599, Aug. 18, 1978; ER-1340, 48 FR 31013, July 6, 1983]

§ 208.202c Air carrier to identify enplanements.

The carrier shall make reasonable efforts to assure that no person is enplaned whose name does not appear on the list of passengers supplied by the charterer under § 208.215.

[ER-1222, 46 FR 28379, May 26, 1981]

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 208.203 [Reserved]

§ 208.204 Statement of supporting information.

Travel agents shall execute, and furnish to foreign air carriers, section A of Part II of the Statement of Supporting Information (Appendix B) at such time as required by the carrier to afford it due time for review thereof.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-1222, 46 FR 28379, May 26, 1981, as amended by ER-1340, 48 FR 31013, July 6, 1983]

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§ 208.210 Solicitation of charter participants.

(a) As used in this section, "solicitation of the general public" means:

(1) A solicitation going beyond the bona fide members of an organization (and their immediate families). This includes air transportation services offered by an air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations, and college newspapers shall not be considered advertising in mass media to the extent that

(i) The advertising is placed in a medium of communication circulated mainly to members of an organization that would be eligible to obtain charter service, and

(ii) The advertising states that the charter is open only to members of the organization referred to in paragraph (a)(1)(i) of this section, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in paragraph (a)(1)(i) of this section: *Provided*, That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

(2) The solicitation, without limitation of the members of an organization so constituted as to ease the admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(b) Members of the charter group may be solicited only from among the bona fide members of an organization, club, or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. "Bona fide members" means those members of a charter organization who:

(1) Have not joined the organization merely to participate in the charter as the result of solicitation of the general public; and (2) are members for a minimum of 6 months prior to the starting flight date. The requirement in paragraph (b)(2) of this section is not applicable to:

(i) Students and employees of a single school, and immediate families thereof; or

(ii) Employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof.

(c) Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

(d) A charterer shall not advertise or otherwise solicit its members for any charter until a charter contract has been signed: *Provided, however,* That this prohibition shall not extend to oral inquiries or internal mailings directed to members to determine interest in a charter flight or charter program so long as no fixed price for air transportation is held out. After a charter contract is signed, copies of solicitation material shall be furnished the carrier at the same time it is distributed to members.

(e) Printed solicitation materials shall contain the following notice in boldface, 10-point or larger type:

SOME OF THE FEDERAL RULES THAT PROTECT AGAINST TOUR CHANGES AND LOSS OF PASSENGERS' MONEY IN PUBLICLY-SOLD CHARTERS DO NOT APPLY TO THIS PROGRAM.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1177, 45 FR 40575, June 16, 1980]

§ 208.211 Passengers on charter flights.

Only bona fide members of the charterer, and their immediate families, may participate as passengers of a charter flight, and the participants must be members of the specific organization or chapter which authorized the charter. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.[5] Where four or more round-trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, intermingling between flights or reforming of planeload groups, or less than planeload groups (see § 208.6(c)), shall not be permitted, and each group must move as a unit in both directions, except as provided in § 208.36.

§ 208.212 Participation of immediate families in charter flights.

(a) The immediate family of any bona fide member of a charter organization may participate in a charter flight.

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[5] Where the charter is based on employment in one entity or student or employee status at a school, records of the corporation, agency or school will suffice to meet the requirements

(b) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

§ 208.213 Charter costs.

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that: (1) Children under 12 years of age may be transported at a charge less than the equally prorated charge; (2) children under 2 years of age may be transported free of charge.

(b) The charter shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1225, 46 FR 31000, June 12, 1981]

§ 208.214 Statements of charges.

The chartering organization, in any announcements or statements to prospective charter participants giving price per seat, shall state that the seat price is a pro rata share of total charter cost and is subject to increase or decrease depending on the number of participants. All announcements shall separately state the cost of ground arrangements, if any, the cost of air transportation, the administrative expenses of the charterer, and the total cost of the entire trip. All announcements shall also identify the carrier, the number of seats available, and the type of aircraft to be used for the charter.

§ 208.215 Passenger lists.

(a) Prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger list as follows:

(1) A bona fide member of the chartering organization who will have been a bona fide member of the chartering organization for at least 6 months prior to the starting flight date. Specify on the passenger list as "(1) member."

(2) The spouse, dependent child, or parent of a bona fide member who lives in such member's household. Specify on the passenger list as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons employed by a single Government agency, industrial plant, or mercantile company, or students and employees of a school or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger lists as "(3) special" or "(3) member" (where participants are from a school group or from a Government agency, industrial plant, or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the outbound and inbound trips must be explained on the list.

(d) Attached to such list must be a certification, signed by a duly authorized representative of the charterer, reading:

The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a bona fide member of the chartering organization, and will have been a member for at least 6 months prior to the starting flight date, or (2) is a bona fide member of an entity consisting of (*a*) students and employees of a single school, or (*b*) employees of a single Government agency, industrial plant, or merchantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household.*

——————(Signature)

§ 208.216 Application for a charter.

A chartering organization shall make written application to the air carrier, setting forth the number of seats desired, points to be included in the proposed flight or flights, the dates of departure for each one-way or round-trip flight, and the number of round-trip flights which have been conducted for the organization by any carrier or carriers during the calendar year.

(Approved by the Office of Management and Budget under control number 3024-0001)

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1340, 48 FR 31013, July 6, 1983]

§ 208.217 Statement of supporting information.

Charterers shall execute and file with the foreign air carrier section B of part II of the Statement of Supporting Information (Appendix B) at such time as required by the carrier to afford it due time for review thereof.

[ER-1222, 46 FR 28379, May 26, 1981]

Subpart D—Provisions Relating to Single Entity Charters

§ 208.300 Applicability of subpart.

This subpart sets forth the special rules applicable to single entity charters.

§ 208.301 Terms of service.

The provisions of Subpart A of this part, except paragraph (f) of § 208.32, shall apply to charters under this subpart.

[ER-1210, 46 FR 10457, Feb. 3, 1981]

§ 208.302 [Reserved]

§ 208.303 Statement of Supporting Information.

Part I of the Statement of Supporting Information (Appendix B) shall be applicable in the case of single entity charters.

[ER-1222, 46 FR 28379, May 26, 1981]

Subpart E—Provisions Relating to Mixed Charters

§ 208.400 Applicable rules.

The rules set forth in Subpart C of this part shall apply in the case of mixed charters.

Subpart F—Direct Sales by Air Carriers

SOURCE: ER-1142, 44 FR 50825, Aug. 30, 1979, unless otherwise noted.

§ 208.500 Applicability of subpart.

This subpart applies to direct air carriers that provide charter trips, including trips with ground accommodations and services, directly to individuals.

§ 208.501 Terms of service.

(a) Charter trips under this subpart shall bear only such characteristics as are permitted for Public Charters under Part 380 of this chapter, except:

(1) They may be arranged and sold by a direct air carrier;

(2) There is no minimum contract size; and

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* Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or documents knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisioned not more than 5 years or both. Title 18, U.S.C. 1001.

(3) Each participant contract shall be signed by or on behalf of the participant not less than 7 days before scheduled departure of the outbound flight.

(b) Each direct air carrier operating a charter trip under this subpart shall comply with all the requirements and limitations of Part 380 of this chapter, *Public Charters*, applicable to direct carriers and to charter operators except that:

(1) Those provisions of Part 380 relating to the existence of a contract between a charter operator and a direct carrier do not apply;

(2) Section 380.34 does not apply except as specified in paragraph (b)(4) of this section.

(3) If a depository agreement is used, it shall comply with § 380.34a (d) and (f); and

(4) If a security agreement is used, it shall comply with § 380.34 (c) and (d), and:

(i) If no depository agreement is used, protect charter participant deposits (including those for ground accommodations and services) and assure the direct air carrier's contractual and regulatory responsibilities to charter participants in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

(ii) If used in combination with a depository agreement, protect charter participant deposits (including those for ground accommodations and services) and assure the direct air carrier's contractual and regulatory responsibilities to charter participants in the amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000. The liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant.

(c) For the purposes of this section, "charter trip" includes charter tours with or without ground accommodations and services.

§ 208.502 Board powers.

The Board retains, with respect to charters under this subpart, all powers that it has under Part 380 of this chapter with respect to Public Charters.

Appendix A—Supplemental Air Carriers' Surety Bond Under Part 208 of the Economic Regulations of the Civil Aeronautics Board (14 CFR Part 208)

Know all men by these present, that we ————(Name of supplemental air carrier) of ————(City) ———— (State) as PRINCIPAL (hereinafter called Principal), and ————(Name of Surety) a corporation created and existing under the laws of the State of ————(State) as SURETY (hereinafter called Surety) are held and firmly bound unto the United States of America in an unlimited amount as required by § 208.40(c) of Part 208, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal, a supplemental air carrier holding a certificate of public convenience and necessity issued under section 401(d)(3) of the Federal Aviation Act, is subject to rules and regulations of the Board relating to security for the protection of charterers of civil aircraft and has elected to file with the Civil Aeronautics Board such a bond as will guarantee to the United States Government the performance of all air transportation services (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of the Board's regulations, to be performed, in whole or in part, by such carrier pursuant to contracts entered into by such carrier, after the execution date of this bond and

Whereas, this bond is written to assure compliance by the Principal with rules and regulations of the Board relating to security for the protection of charterers of civil aircraft for charter trips (other than cargo charter trips) originating in the United States and of overseas military personnel charters and shall inure to the benefit of any and all such charters to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to such charters any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts made by the Principal while this bond is in effect for the performance of air transportation services (other than cargo charter trips) originating in the United States and of overseas military personnel charter trips, than this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charterer shall not exceed the total cost to such charterer for air transportation services in accordance with his contract with the Principal.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder in any specified amount. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ————, 19——, 12:01 a.m., standard time at the address of the Principal as stated herein, and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of such notice by the Board. The Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as the result of any contracts for the performance of air transportation services made by the Principal after the termination of this bond becomes effective, as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts for the performance of air transportation services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charterer who shall within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by this bond give written notice of the claim to the supplemental air carrier, or, if he is unavailable, to the Surety, and all liability on the bond for such charter trip shall automatically terminate sixty (60) days after the cancellation date thereof except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the —— day of ————, 19——.

PRINCIPAL
Name ————
By ———— (Signature and Title)
Witness ————

SURETY
Name ————(SEAL)
By ————(Signature and Title)
Witness ————

Only corporations may qualify to act as Surety and they must meet the requirements set forth in § 208.40(d) of Part 208.

[ER-810, 38 FR 20257, July 30, 1973]

APPENDIX B—STATEMENT OF SUPPORTING INFORMATION[1]

Part I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter, clearly indicate applicability of answers.)

1. Name of transporting carrier: ————

————

2. Commencement date(s) of proposed flight(s): ————

————

(a) Going ————
(b) Returning ————

3. Points to be included in proposed flight(s): ————

————

(a) From ————
to ————
(b) Returning from ————
to ————
(c) Other stops required by charterer: ————

————

4. (a) Type of aircraft to be used: ————

————

(b) Seating capacity: ————
(c) Number of persons to be transported:—

————

5. Total charter price: ————

————

6. (a) Has the carrier paid, or does it contemplate payment of any commissions, direct or indirect, in connection with the proposed flight? Yes [ ] No [ ]

(b) If "yes" give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation.

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[1] This must be retained by the air carrier for 2 years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes [ ] No [ ]

(b) If "Yes" describe services or functions:

8. Name and address of charterer: ________

9. If charter is single entity, indicate purpose of flight: ________

10. On what date was the charter contract executed? ________

11. If the charter is pro rata, has a copy of Part 208 of the Civil Aeronautics Board's economic regulations been mailed to or delivered to the prospective charterer?
Yes [ ] No [ ]

Part II—To be completed for pro rata or mixed charters only.

Sections A—To be supplied by travel agent, or where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements).

1. What specific services have been or will be provided by agent to charterer on a group basis? ________

2. What specific services have been or will be provided by agent to individual participants in the proposed charter? ________

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes [ ] No [ ]

4. Does the agent have any financial interest in any organization rendering services to the chartering organization?
Yes [ ] No [ ]. If answer is "yes" explain:

WARRANTY [2]

I, ________(Name) represent and warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in part II, section A) and will act with regard to such operation in a manner consistent with Part 208 of the Board's economic regulations.

(Date) ________

____

(Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).)

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objective and purposes: ________

2. What activities are sponsored by the chartering organization? ________

3. When was the organization founded? —

4. Qualification or requirements for membership in organization and membership fee, if any: ________

---

[2] Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse * * * to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board * * *, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum * * * shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49 U.S.C., 1472(e).

Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., 1001.

————————————————

————————————————

5. Has there been any reference to prospective charter flights in soliciting new members for the charter organization?
Yes [ ] No [ ]

6. State where a list of members is available for inspection. ————————

————————————————

7. Attach list of prospective passengers (including "standbys" and one-way passengers designated as such), showing for each: (a) Name, address, and telephone number; (b) relationship of such person to chartering organization, i.e., member, spouse, dependent child, parent or "special" (a person whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver); (c) if such person is related to a member who is not a prospective passenger, the member's name, address, and telephone number; and (d) date member joined or last renewed a lapsed membership. (NOTE: This is a list of prospective passengers, and does not necessarily have to represent the passengers actually to be carried. The list is to the amended, if passengers are dropped or added before flights and the certification required by § 208.215 must be attached to the list.)

8. What are requirements for participation in charter? ————————

————————————————

9. How were prospective participants for charter solicited (attach any solicitation material)? ————————

————————————————

10. Will there be any participants in the charter flight other than (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group residing in the same household with the member?
Yes [ ] No [ ]

11. Will there by any members of the charter organization participating in the charter who will have been members of the organization for a period of less than 6 months prior to flight date?[3] Yes [ ] No [ ]. If answer is "yes," give names of participants who will not have been members for 6 months: ————————

————————————————

12. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in part II, section A, submit name, address, remuneration, and scope of activity: ————————

————————————————

————————————————

13. Estimated receipts: ———— (Pro rata charge)×———— (No. of passengers)=$———— (Estimated receipts from charter).

Estimated receipts from other sources, if any: ————————

————————————————

Explain: ————————

————————————————

(a) Total receipts. $————Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

Item	*Amount*	*Payable to*

(b) Total expenditures: $————

Explain any difference between (a) and (b): ————————

————————————————

————————————————

14. Are any of the expenses included in item 13 above, to be paid to any members of the chartering organization? Yes [ ] No [ ]. If "yes" state how much, to whom and for what services: ————————

————————————————

15. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes [ ] No [ ]. If "yes" explain fully: ————————

————————————————

————————————————

16. Will any person in the group (except children under 2 years) be transported without charge? Yes [ ] No [ ]

17. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under 12 years old? Yes [ ] No [ ]

18. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction: ————————

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[3] Not applicable to school charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

19. If four or more round trips are contracted for, will each group move as a unit in both directions? Yes [ ] No [ ]

20. If charters have been performed for organization during past 5 years, give dates and name of carrier performing charters:

______

______

21. Has a copy of Part 208 "Terms, Conditions and Limitations of Certificates to engage in Supplemental Air Transportation," of the economic regulations of the Civil Aeronautics Board been received by the charterer? Yes [ ] No [ ]

22. Attach copies of all announcements of the chartering organization in connection with the charter issued after the charter contract is signed.

WARRANTY OF CHARTERER [4]

I, ______ (Name) and ______ (Name) represent and warrant that the charterer has acted with regard to this charter operation explained in part II, section B), and will act with regard to such operation, in a manner consistent with Part 208 of the Board's Economic Regulations. I (we) further represent and warrant that the charterer has not offered charter flights simultaneously with the solicitation of membership in the chartering organization in any mass media advertising or notice or through direct mailing or public posters. I (we) further represent and warrant that all charter participants have been informed of eligibility and cost requirements of Part 208 and that a flight may be canceled if ineligible participants are included.

Date)

______

(Signature—person within organization in charge of charter arrangements)

______

(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by school official not directly involved in charter.)

WARRANTY OF AIR CARRIER [5]

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts warranted by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 208 of the Board's economic regulations.

(Date) ______

______

(Signature and title of authorized official of air carrier)

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. (18 U.S.C. 1001).

[ER-803, 38 FR 14272, May 31, 1973, as amended by ER-1127, 44 FR 33055, June 8, 1979. Redesignated by ER-1222, 46 FR 28379, May 26, 1981]

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[4] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisonment not more than 5 years, or both. Title 18, U.S.C., 1001.

[5] Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse * * * to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board * * *, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum * * * shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. (49 U.S.C. 1472(e)).

PART 211—APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS

Subpart A—General

Sec.

211.1 Purpose.
211.2 Applicability.

Subpart B—General Requirements

211.10 Filing specifications.
211.11 Verification.
211.12 Filing and service.
211.13 Amendments to applications.
211.14 Incorporation by reference.
211.15 Statements of fact.
211.16 Oral hearing.

Subpart C—Information Requirements

211.20 Initial foreign air carrier permit or transfer of a permit.
211.21 Amendments or renewal of foreign air carrier permits.

AUTHORITY: Secs. 204, 402, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 757, 771, 788; 49 U.S.C. 1324, 1372, 1386, 1481, 1482.

SOURCE: ER-1386, 49 FR 33439, Aug. 23, 1984, unless otherwise noted.

Subpart A—General

§ 211.1 Purpose.

This part sets forth the filing and evidence requirements for foreign air carriers applying for authority to engage in foreign air transportation under section 402 of the Federal Aviation Act.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.2 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all foreign air carriers seeking initial foreign air carrier permits or the transfer, renewal, or amendment of an existing foreign air carrier permit.

(b) Canadian charter air taxi operators, foreign indirect air carriers of property, and foreign charter operators are not required to submit applications under this part. Instead, Canadian charter air taxi operators shall register under Part 294 of this chapter, foreign indirect air carriers of property shall register under Part 297 of this chapter, and foreign charter operators shall register under Subpart F of Part 380 of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

Subpart B—General Requirements

§ 211.10 Filing specifications.

(a) Except as provided in paragraph (b) of this section, applicants shall follow the requirements in § 302.3 of this chapter as to execution, number of copies, and formal specifications of papers.

(b) Mexican air taxi operators filing applications for foreign air carrier permits authorizing charter flights across the Mexico-United States border with small aircraft (a maximum passenger capacity of 60 seats or less, or a maximum payload capacity of 18,000 pounds or less) shall file an original and two copies of the application. The application shall conform to the instruction document available from the Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, DC 20428.

(c) An application shall have consecutively numbered pages, and shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits are part of the application to which they are attached.

(d) Applications shall state all weights, measures and monetary units in U.S. terms, and all text in English.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.11 Verification.

Applications shall be verified and subscribed and sworn to before a Notary Public or other officer authorized to administer oaths in the jurisdiction in which the application is executed. An application verified before a United States consular officer meets the requirements of this section.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.12 Filing and service.

All types of applications for foreign air carrier permits (initial, renewal, amendment, or transfer) are filed as of the date the applications are received at the Board's Docket Section. Each applicant shall serve those persons as required in Part 302, Subpart Q, of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.13 Amendments to applications.

An applicant shall submit any information required by this part that is omitted from the original application, or any additional information, as an amendment to the original application. Applicants shall consecutively number amendments to applications and shall comply with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.14 Incorporation by reference.

Where two or more applications are filed by a single carrier, the applicant may incorporate lengthy exhibits, or other documents, attached to one application into others by reference. The applicant may not incorporate by reference and update any information from a previous docket unless submitted within the past 2 years. The applicant must identify the docket, and the page number or exhibit number being incorporated, and state that there has been no change in that information since submitting the original information.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.15 Statements of fact.

The applicant shall include only significant and relevant facts in an application. Each application shall contain adequate information with respect to the evidence required in Subpart C of this part. The application may contain other information and data the applicant considers necessary to explain particular circumstances.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.16 Oral hearing.

If an oral evidentiary hearing is convened, the applicant must make available witnesses who are competent and able to testify to the accuracy of the statements and documents submitted.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

Subpart C—Information Requirements

§ 211.20 Initial foreign air carrier permit or transfer of a permit.

A person applying for an initial foreign air carrier permit or the transfer of a permit shall submit the information listed below. The applicant must fully comply with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation, and include substitute information most closely approximating the information requested. The Board may require an applicant to provide additional information as necessary.

(a) State the name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.), and, if other than an individual, the name of the country under the laws of which it is organized and the statutory citation of such laws, if any.

(b) State the name and official address of the government air transport authority of applicant's country of citizenship having regulatory jurisdiction over applicant.

(c) Supply the following information regarding the services proposed:

(1) A complete statement of the authority sought; and

(2) A description of the services proposed, specifying:

(i) The point or points in the United States proposed to be served:

(ii) The frequency of service planned at the start of operations, indicating any seasonal variations; whether the service proposed is to be scheduled, nonscheduled or charter; whether the service would be passenger, or property and mail, or a combination; and the type of equipment (and configuration) to be used; and

(iii) A service schedule stating the manner in which the service will be operated (e.g., nonstop or multi-stop, and the identity of proposed intermediate traffic and nontraffic points).

(d) Provide the names, addresses (both residence and business), and citizenship of all Directors, Officers and key management personnel, including the President, Vice Presidents, the Directors or Supervisors of Operations, Maintenance, and Finance, and the chief pilot and chief inspector. Indicate whether any of these persons are related by blood or marriage.

(e) Provide the names and citizenship of all persons holding five percent (5%) or more of the capital stock or capital of the applicant. Also indicate the number and percentage of shares of stock or percentage of capital held by each. If five percent or more of the applicant's stock is held by a corporation or partnership, set forth the name and citizenship of each person holding five percent or more of the entire capital stock or capital of that corporation or partnership and the respective interest of each. If any shares are held for the benefit of another person, give the name and citizenship of that person.

(f) If the applicant is not wholly owned by its homeland government, state whether the applicant (each officer, director, manager, or holder of five percent or more of the capital stock) holds any interest directly or indirectly (through brokers or holding companies) in any of the entities listed below. If no interest is held, so state.

(1) Any U.S. carrier;

(2) Any other foreign air carrier;

(3) Any persons engaged in the business of aeronautics; and

(4) Any common carrier, or any person whose principal business is the holding of stock in, or control of, any air carrier.

(g) Indicate the relationship between the applicant and its homeland government. If the applicant is wholly owned or substantially owned by the government, indicate which governmental department has responsibility for managerial decisions.

(h) State whether the applicant's insurance coverage meets or exceeds the liability limits of 14 CFR Part 205. State the name(s) of its insurance carrier(s).

(i) Supply certified evidence, in English, of the applicant's operating authority issued by its government that relates to the operations proposed. This evidence must include a description of the applicant's present authority, the expiration date of this authority, and the manner in which it is expected to be renewed.

(j) Summarize the operating history of the applicant. Include the types of transportation services rendered, points served, etc., from the beginning of operations to the present. Also, if the applicant is a new airline (i.e., an airline that began direct air services within the past 12 months), briefly summarize the business experience of each officer, director and key management personnel, emphasizing any air transportation experience.

(k) Provide a list of the aircraft owned, leased and operated by the applicant. State each aircraft registration number and the country of registration. If leased, state the address and citizenship of each lessor. Describe any plans for the acquisition or lease of additional aircraft if the present permit application is granted as proposed. If any of the listed aircraft will not be used exclusively by the applicant, explain its proposed use. State whether any aircraft are or will be wet-leased.

(l) State where and by whom the maintenance of the aircraft is or will be performed. State whether the applicant's maintenance program complies with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7. Also state whether the applicant's home country is a contracting State to the Convention on International Civil Aviation.

(m) Briefly describe any agreements or cooperative working arrangements (e.g., block-space, wet-lease), both oral and written, entered with and between the applicant, or on behalf of the applicant, and any U.S. or foreign air carrier, affecting the proposed services to the United States that are not on file with the Board. If there are no such agreements, so state.

(n) Supply financial data summaries, setting forth in U.S. dollars the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal). These summaries must be accompanied by a statement from the applicant's official responsible for preparation of the summaries that the submissions are complete and accurate. These summaries must include the following data, but need not be more detailed than the financial data summaries published by ICAO:

(1) The profit and loss summary shall identify:

(i) Total air transport operating revenues (separated into three categories: passenger, cargo, and other transport revenues);

(ii) Total air transport operating expenses;

(iii) Operating result (difference between (i) and (ii));

(iv) Non-operating items; and

(v) Profit or loss after income taxes.

(2) The balance sheet summary shall state and identify:

(i) Current assets;

(ii) Flight equipment (after depreciation);

(iii) Other assets;

(iv) Total assets (sum of (i) through (iii));

(v) Current liabilities;

(vi) Other liabilities;

(vii) Long-term debt;

(viii) Capital stock;

(ix) Retained earnings (balance including capital surplus); and

(x) Total liabilities and equity (sum of (v) through (ix)).

(o) Describe the amount, type and reason for financial assistance received or expected from the applicant's home government, if any.

(p) Submit an estimate showing the total traffic and the financial results of the proposed services for the first full year of normal operations and the supporting data employed to calculate the financial forecast.

(q) If the air transportation proposed is not covered by an air transport agreement, state in narrative form each of the elements of reciprocity or comity relied upon for the requested authority. If the authority requested is governed by an agreement, state whether the applicant has been formally designated by its homeland government, and, if so, cite the diplomatic note.

(r) To the extent not described in paragraph (q), state the policy of the applicant's homeland government with respect to U.S. carriers' applications for scheduled and charter authority. Specifically state whether the homeland government grants Fifth Freedom traffic rights to U.S. carriers.

(s) For the preceeding 5 years, state whether the applicant has been involved in any safety or tariff violations or any fatal accidents. If so, furnish details.

(t) Submit 3 completed copies of CAB Form 263 (Waiver of liability limits under the Warsaw Convention).

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 33439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.21 Amendments or renewal of foreign air carrier permits.

A person applying for an amendment or renewal of a foreign air carrier permit shall submit the information listed below. The applicant must comply fully with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation and include substitute information most closely approximating the information requested. The Board may require an applicant to provide any additional information necessary.

(a) The information required in paragraphs (a), (b), (l), (o), (q), (r), and (s), of § 211.20.

(b) Except if seeking renewal of existing authority, the information specified in paragraphs (c) and (p) of § 211.20 regarding the new or altered services proposed to be operated.

(c) If the financial material for the applicant on file with the Board is more than 2 years old, financial summaries setting forth, in U.S. dollars, the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal) as required in paragraph (n) of § 211.20, together with the statement of completeness and accuracy required by that paragraph. If the financial material on file with the board is 2 years old or less, the applicant may incorporate that information by reference as described in § 211.14 of this part.

(d) If the ownership and control of the applicant are substantially unchanged, so state. If a change has occurred, the applicant shall respond to the paragraph in § 211.20 that most closely relates to the change that has taken place.

(e) A statement that applicant's maintenance program continues to comply with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

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APPENDIX C—CAB FORM 433

AUTHORITY: Secs. 101(3), 102, 204, 401, 402, 403, 404, 407, 411, 416, 1002, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1482.

SOURCE: ER-686, 36 FR 7449, Apr. 20, 1971, unless otherwise noted.

Subpart A—General Provisions

SOURCE: ER-1220, 46 FR 28371, May 26, 1981, unless otherwise noted.

§ 212.1 Applicability.

This part applies to foreign air carriers that have a section 402 permit or an exemption authorizing direct foreign air transportation on a charter basis. Nothing in this part gives authority to operate a type or level of service not authorized by permit or exemption.

§ 212.2 Definitions.

For the purposes of this part:

"Charter," "charter flight," or "charter trip" means air transportation performed pursuant to § 212.3.

"Charter organization" means that organization, group, or other entity from whose members (and their immediate families) a charter group is derived.

"Third freedom charter" means a charter carrying traffic that originates in the country of the carrier's nationality and terminates in another country.

"Fourth freedom charter" means a charter carrying traffic that terminates in the country of the carrier's nationality and originates in another country.

"Fifth freedom charter" means a charter carrying traffic that originates and terminates in countries other than the country of the carrier's nationality, regardless of whether the flight operates via the home country.

"Long-term wet lease" means a lease by which the lessor provides both an aircraft and its crew, which either (a) lasts more than 60 days, or (b) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

"Mixed charter" means a charter, the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

"Pro rata charter" means a charter the cost of which is divided among the passengers transported.

"Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

"Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47769, Sept. 30, 1981]

§ 212.3 Charter flight limitations.

(a) Passenger charter flights by foreign air carriers in foreign air transportation shall be limited to the movement of persons or their baggage on a time, mileage, or trip basis:

(1) Where all or part of an aircraft has been engaged by any of the following persons:

(i) By a person for his or her own use, including a direct air carrier or a direct foreign air carrier whether or not the charter is a wet lease for the carriage of commercial traffic;

(ii) By a person (no part whose business is the formation of groups for transportation or the consolidation of shipments for transportation or solicitation or sale of transportation services) for the transportation of a group of persons as agent or representative of such group;

(iii) By an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(iv) By a charter operator or foreign charter operator as defined in Part 380 of this chapter.

(2) In accordance with Subpart E.

(b)(1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to paragraph (a)(1) of this section shall contract and pay for 20 or more seats.

(2) This section permits the carriage of charter cargo on the main deck or in the belly of a passenger charter flight.

(c) Cargo charter flights in foreign air transportation by a foreign air carrier are permitted without limitation, except as set forth in § 212.4. Charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or individually waybilled traffic and on flights carrying charter traffic only.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47769, Sept. 30, 1981; ER-1275, 47 FR 137, Jan 5, 1982]

§ 212.4 Prior authorization requirements.

(a) A foreign air carrier shall not perform any charter trip for which a statement of authorization is required until one has been granted by the Board. In addition, if the carrier is one that is required to obtain a statement of authorization under paragraph (e) of this section, neither it, nor any charter operator, travel agent, or any other person shall advertise or sell, or allow others to advertise or sell, any passenger charter services except those that have been specifically authorized by the Board.

(b) Foreign air carriers shall obtain a statement of authorization for each:

(1) Fifth freedom charter flight to or from the United States,

(2) Long-term wet lease to a direct air carrier or direct foreign air carrier,

(3) Charter flight for which the Board specially requires prior authorization under paragraph (e) or (f) of this section, or

(4) Flight carrying both charter and scheduled passenger traffic (hereafter "part charter").

(c) [Reserved]

(d) The Board may issue blanket statements of authorization to foreign air carriers to conduct fifth freedom charters. The standards for issuing such blanket authorizations shall be those stated in § 212.6. The Board may revoke any authority granted under this paragraph at any time without hearing.

(e) The Board may at any time, with or without hearing, but with at least 30 days' notice require a foreign air carrier to obtain a statement of authorization before operating any charter flight. In deciding whether to impose such a requirement, the Board will consider (but not be limited to considering) whether the country of the carrier's nationality:

(1) Requires prior approval for third or fourth freedom charter flights by United States air carriers,

(2) Has, over the objection of U.S. government, denied rights of a United States air carrier guaranteed by a bilateral agreement, or

(3) Has otherwise impaired, limited, or denied the operating rights of U.S. air carriers, or engaged in unfair, discriminatory or restrictive practices with respect to air transportation services, to, from, through, or over its territory.

(f) The Board, in the interest of national security, may require the airline(s) of some countries to obtain a statement of authorization before operating any charter over U.S. territory.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47769, Sept. 30, 1981; ER-1275, 47 FR 137, Jan 5, 1982; ER-1357, 48 FR 36447, Aug. 11, 1983]

§ 212.5 Application for authorization.

(a) Application for a statement of authorization shall be submitted on CAB Form 433 (Appendix C), except that for part charters or long-term wet leases the application may be submitted in letter form. An application for a long-term wet lease shall describe the purpose and terms of the wet lease agreement. Applications shall be submitted in three copies to the Civil Aeronautics Board, addressed to the Director, Bureau of International Aviation. Upon a showing of good cause, the application may be transmitted by cablegram or telegram or may be made by telephone.

(b) A copy of the application for a long-term wet lease to a direct air carrier or direct foreign air carrier shall also be served on the Federal Aviation

Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall include documentation to establish the extent to which the country of the applicant's nationality (and, in the case of a long-term wet lease, the country of the lessee's nationality) deals with United States air carriers on the basis of reciprocity for similar flights, if such flights are not subject to a bilateral agreement and:

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country, or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d)(1) Applications shall be filed at least 5 business days before commencement of the proposed flight, except as specified in paragraphs (d)(2) and (d)(3) of this section. Late applications may be considered by the Board upon a showing of good cause for the lateness.

(2) Applications for a part charter or for a long-term wet lease to a direct air carrier or direct foreign air carrier shall be filed at least 45 days before the date of the first proposed flight.

(3) Applications specially required under § 212.4(e) shall be filed at least 30 calendar days before the proposed flight, unless otherwise specified by the Board.

(4) Applications required by a Board order under § 212.4(f) shall be filed at least 14 calendar days before the proposed flight, unless otherwise specified by the Board.

(5) Where an application is required by more than one provision of this part and/or order of the Board, only one application need be filed, but it must conform to the earliest applicable filing deadline.

(e)(1) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application or before the date of the proposed flight, whichever is earlier. Memoranda will be considered to the extent practicable; the Board may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the applications should be granted or denied, accompanied by whatever data, including affidavits, the Board is requested to consider.

(3) A copy of each memorandum shall be served on the foreign air carrier applying for approval.

(f)(1) Unless otherwise ordered by the Board, each application and memorandum filed in response shall be available for public inspection at the Regulatory Affairs Division of the Bureau of International Aviation immediately upon filing. Notice of the filing of all applications shall be published in the Board's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Board finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

(Approved by the Office of Management and Budget under control number 3024-0015)

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47769, Sept. 30, 1981; ER-1275, 47 FR 137, Jan 5, 1982; ER-1341, 48 FR 31014, July 6, 1983]

§ 212.6 Issuance of authorization.

(a) The Board will issue a statement of authorization if it finds that the proposed charter trip meets the requirements of this part and that it is in the public interest. Statements of authorization may be conditioned or limited.

(b) In determining the public interest the Board will consider (but not be limited to) the following factors.

(1) The extent to which the authority sought is covered by and consistent

with bilateral agreements to which the United States is a party.

(2) The extent to which the country of the carrier's nationality (and, in the case of a long-term wet lease, the country of the lessee's nationality) deals with United States air carriers on the basis of substantial reciprocity.

(3) Whether the foreign air carrier or its agent or the charterer or its agent has previously violated the provisions of this part.

(4) Where the application concerns a long-term wet lease:

(i) Whether the foreign air carrier or its agent or the lessee (charterer) or its agent has previously violated the provisions of Part 207, 208, or 218 of this chapter.

(ii) Whether, because of the nature of the arrangement and the benefits involved, the authority sought should be the subject of a bilateral agreement.

(iii) To what extent the applicant owns or controls the lessee, or is owned or controlled by the lessee.

(c) The Board will submit any denial of an authorization specifically required under § 212.4(e) to the President of the United States at least 10 days before the proposed departure. The denial will be subject to stay or disapproval by the President within 10 days after it is submitted. A shorter period for Presidential review may be specified by the Board where the application for authorization is not timely or properly filed. Denial of a late-filed application need not be submitted to the President.

(d) The Board will publish notice of its actions on applications for statements of authorization in the Status of Charter Applications attachment to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters or endorsed forms advising applicants of action taken on their applications.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47770, Sept. 30, 1981]

§ 212.7 Written contracts with charterers.

Every agreement to perform a charter trip shall be in writing and signed by an authorized representative of the foreign air carrier and the charterer prior to operation of a charter flight: *Provided*, That where execution of a contract prior to commencement of flight is impracticable because the charter has been arranged on short notice, compliance with the provision hereof shall be effected within 7 days after commencement of the flight. The written agreement shall include, without limitation:

(a) Date and place of execution of the contract or agreement;

(b) Signature, printed or typed name of each signatory, and official position of each;

(c) Dates of flights and points involved;

(d) Type of aircraft and its capacity stated as the number of passenger seats or pounds of cargo capacity available;

(e) Rates, fares, and charges applicable to the charter trip, including the charter price, live and ferry mileage charges, and layover and other nonflight charges;

(f) The name and address of either the surety whose bond secures advance charter payments received by the carrier, or of the carrier's depository bank to which checks or money orders for the advance charter payments are to be made payable as escrow holder pending completion of the charter trip; and

(g) A statement that unless the charterer files a claim with the carrier, or, if the carrier is unavailable, with the surety, within 60 days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip (see § 212.12(c)).

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§ 212.8 Terms of service.

(a) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation: *Provided, however,* that in the case of a passenger charter for less than the entire capacity of an aircraft, the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, from the passenger charterers not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(b) Where four or more round trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, one-way passengers shall not be carried except that up to 5 percent of the charter group may be transported one way in each direction, there shall be no intermingling of passengers, and each group shall move as a unit in both directions, except as provided in § 212.9. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid this 5 percent limitation.

[ER-1220, 46 FR 28371, May 28, 1981, as amended by ER-1275, 47 FR 137, Jan 5, 1982

§ 212.9 Substitute transportation in emergencies.

(a) A carrier shall be permitted to transport a passenger on a charter flight with a group other than his or her own or on a ferry flight (as defined in § 241.03 of this chapter) under the following circumstances:

(1) The transportation is for return passage only;

(2) The passenger is required to return at a time different from that of his or her own charter flight due to emergency circumstances beyond the passenger's control; and

(3) The charter group with which the passenger is to travel expresses no objection to his or her participation in the charter flight.

(b) For the purposes of this section, "emergency circumstances beyond the passenger's control" include, but are not limited to, illness or injury to the passenger or a member of his or her immediate family, death of a member of the passenger's immediate family, or weather conditions or unforeseeable and unavoidable delays in ground transportation or connecting air transportation.

§ 212.10 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 212.11 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a foreign air carrier permit or other authority authorizing direct foreign charter air transportation that the holder have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263), and comply with all other requirements of Part 203 of this chapter. That form can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(Approved by the Office of Management and Budget under control number 3024-0064)

[ER-1329, 48 FR 8049, Feb. 25, 1983, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§ 212.12 Protection of customers' deposits.

(a) Except as provided in paragraph (c) of this section, no foreign air carrier shall perform any charter trip (other than a cargo charter trip) originating in the United States or any overseas military personnel charter trip, as defined in Part 372 of this chapter, nor shall such carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Board a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with any such charter trip to be performed by said carrier shall be deposited with and maintained by the bank, as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or his agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the charterer (or its agent): *Provided, however,* That where the charter transportation to be performed by a carrier is sold through a travel agent, the agent may be authorized by the carrier to deduct its commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed: *Provided, however,* That the bank may be required by the terms of the agreement to pay over to the carrier a specified portion of such escrowed funds, as payment for the performance of the outbound segment of a round-trip charter upon the carrier's written certification that such segment has been so completed.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer or its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties as provided in the charter contract) which the bank holds with respect to such canceled charter: *Provided, however,* That, in the case of a split charter, escrowed funds shall be turned over to a charterer or its assigns only if the carrier's written certification of cancellation of such charter includes a specific representation that either the charter has been canceled by the carrier or, if the charter has been canceled by the charterer, that the carrier has accepted a substitute charterer.

(4) The bank shall maintain a separate accounting for each charter flight.

(5) As used in this section the term "bank" means a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The escrow agreement required under paragraph (a) shall not be effective until approved by the Board. Claims against the escrow may be made only with respect to the nonperformance of air transportation.

(c) The carrier may elect, in lieu of furnishing an escrow agreement pursuant to paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372, to be performed, in whole or in part, by such carrier pursuant to any contracts entered into by such carrier, after the execution date of the bond. The amount of such bond shall be unlimited. Claims under the bond may be made only with respect to the nonperformance of air transportation.

(d) The bond permitted by this section shall be in the form set forth as Appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which there is located the office or usual residence of the agent designated by the carrier under section 1005(b) of the Act to receive service of notices, process and other documents issued by or filed with the Board. For the purposes of this section the term "State" includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the foreign charter air carrier by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

(e) The bond required by this section shall provide that unless the charterer files a claim with the carrier, or, if the carrier is unavailable, with the surety, within 60 days after cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§§ 212.13–212.14 [Reserved]

§ 212.15 Waiver.

(a) A waiver of any of the provisions of this part may be granted by the Board upon the submission by a foreign air carrier of a written request therefor not less than 30 days prior to the flight to which it relates, provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

(b) A request for a waiver of any of the provisions of § 212.25 shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

Subpart B—Provisions Relating to Pro Rata Charters

§ 212.20 Applicability of subpart.

This subpart sets forth the special rules applicable to pro rata charters.

[ER-1220, 46 FR 28375, May 26, 1981]

REQUIREMENTS RELATING TO FOREIGN AIR CARRIERS

§ 212.21 Solicitation and formation of a chartering group.

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

§ 212.22 Pretrip notification and charter contract.

(a) Upon a charter flight date being reserved by the carrier or its agent the carrier shall provide the prospective charterer with a copy of this Part 212.[3] The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in § 212.45. The carrier shall also require that the charterer and any travel agent involved shall furnish it at least 30 days prior to departure of the first flight the statements of Supporting Information required in §§ 212.47 and 212.31, respectively, unless the charter has been contracted for within 30 days before the date of departure, in which event the statement and attachments shall be filed with the carrier on the date the charter contract is executed. In the event of a substitution of carriers, the carrier with whom the statements and attachments have been filed may forward them to the substitute carrier, in which case new statements need not be executed.

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[3] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D.C. 20402. Single copies will be furnished without charge on written requests to the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.

(b) The carrier shall attach to its copy of the charter contract a certification by an officer of the chartering organization, or other qualified person, that authorizes the person who executes the contract to do so on behalf of the chartering organization. However, certification is not required where the charter is based on employment in one entity, or on employee or student status at a school. If the charter contract is for the return flight of a one-way charter by the same charter organization, a copy of the passenger list (§ 212.45) of the outbound charter shall be attached to the charter contract.

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-1220, 46 FR 28375, May 26, 1981]

§ 212.23 [Reserved]

§ 212.24 Statement of Supporting Information.

Prior to performing a charter flight, the carrier shall execute, and require the travel agent (if any) and the charterer to execute a Statement of Supporting Information (Appendix B). If a charter contract covers more than one charter flight, only one statement need be filed: *Provided, however,* That separate financial data (see item 13 of statement) shall be filed for each one-way or round-trip flight. The carrier shall require the charterer to annex to the statement copies of all announcements of the charterer in connection with the charter issued after the contract is signed.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28375, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§ 212.25 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 212.8(a) shall be not less than 10 days prior to the departing flight.

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 10 days prior to the scheduled departure, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same trip.

(c) [Reserved]

(d) Every carrier which has entered into a charter contract covering only one-way foreign air transportation from the United States, to be performed in connection with a pro rata charter trip originating in the United States, must obtain, before performing such departing flight, either written confirmation from the returning carrier (as provided in paragraph (b) of this section), or a waiver granted by the Board pursuant to § 212.15, such waiver to be based either on the grounds set forth in said § 212.15, or on a showing that the arrangements between the chartering organization and the charter participants do not involve the provision of return transportation to the United States.

(e) For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(Approved by the Office of Management and Budget under control number 3024-0036)

(Interpret or apply sec. 102, as amended, 72 Stat. 740; 49 U.S.C. 1302; secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482))

[ER-742, 37 FR 11239, June 6, 1972, as amended by ER-811, 38 FR 20259, July 30, 1973; ER-1065, 43 FR 36600, Aug. 18, 1978; ER-1220, 46 FR 28375, May 26, 1981; ER-1341, 48 FR 31014, July 6, 1983]

§ 212.26 Foreign air carrier to identify enplanements.

The carrier shall make reasonable efforts to assure that no person is enplaned whose name does not appear on the list of passengers supplied by the charterer under § 212.45.

[ER-1220, 46 FR 28375, May 26, 1981]

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 212.30 [Reserved]

§ 212.31 Statement of Supporting Information.

Travel agents shall execute, and furnish to foreign air carriers, section A of Part II of the Statement of Supporting Information (Appendix B) at such time as required by the carrier to afford it due time for review thereof.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28375, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§ 212.40 Solicitation of charter participants.

(a) As used in this section, "solicitation of the general public" means:

(1) A solicitation going beyond the bona fide members of an organization (and their immediate families). This includes air transportation services offered by a foreign air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations, and college newspapers shall not be considered advertising in mass media to the extent that

(i) The advertising is placed in a medium of communication circulated mainly to members of an organization that would be eligible to obtain charter service, and

(ii) The advertising states that the charter is open only to members of the organization referred to in paragraph (a)(1)(i) of this section, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in paragraph (a)(1)(i) of this section: *Provided,* That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

(2) The solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(b) Members of the charter group may be solicited only from among the bonafide members of an organization, club, or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. "Bona fide members" means those members of a charter organization who (1) have not joined the organization merely to participate in the charter as the result of solicitation of the general public; and (2) are members for a minimum of 6 months prior to the starting flight date. The requirement in paragraph (b)(2) of this section is not applicable to;

(i) Students and employees of a single school, and immediate families thereof; or

(ii) Employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof.

(c) Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the carrier as the charterer.

(d) A charterer shall not advertise or otherwise solicit its members for any charter until a charter contract has been signed: *Provided, however,* That this prohibition shall not extend to oral inquiries or internal mailings directed to members to determine interest in a charter flight or charter program so long as no fixed price for air transportation is held out. After a charter contract is signed, copies of solicitation material shall be furnished the carrier at the same time it is distributed to members.

(e) Printed solicitation materials shall contain the following notice in boldface, 10-point or larger type:

SOME OF THE FEDERAL RULES THAT PROTECT AGAINST TOUR CHANGES AND LOSS OF PASSENGERS' MONEY IN PUBLICLY-SOLD CHARTERS DO NOT APPLY TO THIS PROGRAM.

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-1178, 45 FR 40575, June 16, 1980]

§ 212.41 Passengers on charter flights.

Only bona fide members of the charterer, and their immediate families may participate as passengers on a charter flight, and the participants must be members of the specific organization or chapter which authorized the charter. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.[4] Where four or more round-trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, intermingling between flights or reforming of groups shall not be permitted, and each group must move as a unit in both directions, except as provided in § 212.9.

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-1220, 46 FR 28375, May 26, 1981]

§ 212.42 Participation of immediate families in charter flights.

(a) The immediate family of any bona fide member of a charter organization may participate in a charter flight.

(b) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

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[4] Where the charter is based on employment in one entity or student or employee status at a school, records of the corporation, agency, or school will suffice to meet the requirements.

§ 212.43 Charter costs.

(a) The costs of charter flights shall be prorated equally among all charter passengers, and no charter passenger shall be allowed free transportation except that (1) children under 12 years of age may be transported at a charge less than the equally prorated charge; and (2) children under 2 years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-1226, 46 FR 31000, June 12, 1981]

§ 212.44 Statement of charges.

The chartering organization, in any announcements or statements to prospective charter participants giving price per seat, shall state that the seat price is a pro rata share of total charter cost and is subject to increase or decrease depending on the number of participants. All announcements shall separately state the cost of ground arrangements, if any, the cost of air transportation, the administrative expenses of the charterer, and the total cost of the entire trip. All announcements shall also identify the carrier, the number of seats available and the type of aircraft to be used for the charter.

§ 212.45 Passenger lists.

(a) Prior to each one-way or round-trip flight, a list shall be filed by the charterer with the foreign air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each person to charterer (by designating opposite his name one of the three relationships categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger list as follows:

(1) A bona fide member of the chartering organization who will have been a bona fide member of the chartering organization for at least 6 months prior to the starting flight date. Specify on the passenger list as "(1) member."

(2) The spouse, dependent child, or parent of a bona fide member who lives in such member's household. Specify on the passenger lists as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons employed by a single Government agency, industrial plant, or mercantile company or students and employees of a school, or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger lists as "(3) special" or "(3) member" (where participants are from a school group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the outbound and inbound trips must be explained on the list.

(d) Attached to such list must be a certification, signed by a duly authorized representative of the charterer, reading:

> The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a bona fide member of the chartering organization, and will have been a member for at least 6 months prior to the starting flight date, or (2) is a

bona fide member of an entity consisting of (a) students and employees of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household.[5]

(Signature) ______________________

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-776, 37 FR 24167, Nov. 15, 1972; ER-1341, 48 FR 31014, July 6, 1983]

§ 212.46 Application for a charter.

A chartering organization shall make written application to the foreign air carrier, setting forth the number of seats desired, points to be included in the proposed flight or flights, the dates of departure of each one-way or round-trip flight, and the number of round-trip flights which have been conducted for the organization by any carrier or carriers during the calendar year.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§ 212.47 Statement of Supporting Information.

Charterers shall execute and file with the foreign air carrier section B of Part II of the Statement of Supporting Information (Appendix B) at such time as required by the carrier to afford it due time for review thereof.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28375, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

Subpart C—Provisions Relating to Single Entity Charters

§ 212.50 Applicability of subpart.

This subpart sets forth the special rules applicable to single entity charters.

§§ 212.51–212.52 [Reserved]

§ 212.53 Statement of Supporting Information.

Part I of the Statement of Supporting Information (Appendix B) shall be applicable in the case of single entity charters.

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28375, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

Subpart D—Provisions Relating to Mixed Charters

§ 212.60 Applicable rules.

The rules set forth in Subpart B of this part shall apply in the case of mixed charters.

Subpart E—Direct Sales by Foreign Air Carriers

Authority: Secs. 102, 204, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1372, 1386).

Source: ER-1143, 44 FR 50826, Aug. 30, 1979, unless otherwise noted.

§ 212.70 Applicability of subpart.

This subpart applies to direct foreign air carriers that provide charter trips, including trips with ground accommodations and services, directly to individuals.

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[5] Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., 1001.

§ 212.71 Terms of service.

(a) Charter trips under this subpart shall bear only such characteristics as are permitted for Public Charters under Part 380 of this chapter, except:

(1) They may be arranged and sold by a direct foreign air carrier;

(2) There is no minimum contract size; and

(3) Each participant contract shall be signed by or on behalf of the participant not less than 7 days before scheduled departure of the outbound flight.

(b) Each direct foreign air carrier operating a charter trip under this subpart shall comply with all the requirements and limitations of Part 380 of this chapter, *Public Charters*, applicable to direct foreign air carriers and to foreign charter operators except that:

(1) Those provisions of Part 380 relating to the existence of a contract between a charter operator and a direct carrier do not apply;

(2) Section 380.34 does not apply except as specified in paragraph (b)(4) of this section.

(3) If a depository agreement is used, it shall comply with § 380.34a(d) and (f); and

(4) If a security agreement is used, it shall comply with § 380.34(c) and (d), and:

(i) If no depository agreement is used, protect charter participant deposits (including those for ground accommodations and services) and assure the direct foreign air carrier's contractual and regulatory responsibilities to charter participants in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

(ii) If used in combination with a depository agreement, protect charter participant deposits (including those for ground accommodations and services) and assure the direct air carrier's contractual and regulatory responsibilities to charter participants in the amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000. The liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant.

(c) For the purposes of this section, "charter trip" includes charter tours with or without ground accommodations and services.

§ 212.72 Board powers.

The Board retains, with respect to charters under this subpart, all powers that it has under Part 380 of this chapter with respect to Public Charters.

APPENDIX A—FOREIGN ROUTE AIR CARRIER'S SURETY BOND UNDER PART 212 OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 212)

Know all men by these presents, that we ——— (Name of foreign route air carrier) of ——— (City), ——— (State) as PRINCIPAL (hereinafter called Principal, and ——— (Name of Surety) a corporation created and existing under the laws of the State of ——— (State) as SURETY (hereinafter called Surety) are held and firmly bound unto the United States of America in an unlimited amount, as required by § 212.15(c) of Part 212, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal, a foreign route air carrier holding a permit issued under section 402 of the Federal Aviation Act, authorizing it to engage in charter trips in foreign air transportation, is subject to rules and regulations of the Board relating to security for the protection of characters of civil aircraft and has elected to file with the Civil Aeronautics Board such a bond as will guarantee to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charters, as defined in Part 372 of the Board's Regulations to be performed, in whole or in part, by such carrier pursuant to contracts entered into by such carrier after the execution date of this bond, and

Whereas, this bond is written to assure compliance by the Principal with rules and regulations of the Board relating to security for the protection of charterers of civil aircraft for charter trips (other than cargo charter trips) originating in the United States or of overseas military personnel charter trips and shall inure to the benefit of any and all such charterers to whom the

Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to such charterer any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts made by the Principal while this bond is in effect for the performance of charter trips (other than cargo charter trips) originating in the United States and of overseas military personnel charter trips, than this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charterer shall not exceed the total cost to such charterer for air transportation services in accordance with his contract with the Principal.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder in any specified amount. The surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ——— 19——, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after the actual receipt of such notice by the Board. The Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as the result of any contracts for the performance of air transportation services made by the Principal after the termination of this bond becomes effective, as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts for the performance of air transportation services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charterer who shall within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by this bond give written notice of the claim to the foreign route air carrier, or, if he is unavailable, to the Surety, and all liability on the bond for such charter trip shall automatically terminate sixty (60) days after the cancellation date thereof except for claims filed within the time provided herein.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the —— days of ———, 19——.

PRINCIPAL

Name ————————————
By ————————(Signature and Title)
Witness ————————————

SURETY

Name ————————————
By ————————(Signature and Title)
Witness ————————————

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 212.15(d) of Part 212.

[ER-811, 38 FR 20260, July 30, 1973]

APPENDIX B—STATEMENT OF SUPPORTING INFORMATION[1]

Part I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: ————
2. Commencement date(s) of proposed flight(s): ————————————

————————————

(a) Going ————————————
(b) Returning ————————————

3. Points to be included in proposed flight(s): ————————————

————————————

(a) From ———— to ————
(b) Returning from ———— to

(c) Other stops required by charterer: ——

————————————

4. (a) Type of aircraft to be used:

————————————

(b) Seating capacity: ————
(c) Number of persons to be transported: —

————————————

(5) Total charter price: ————

————————————

6. (a) Has the carrier paid, or does it contemplate payment of any commissions, direct or indirect, in connection with the proposed flight? Yes [ ] No [ ]

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[1] This must be retained by the air carrier for 2 years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

(b) If "yes" give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation.

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes [ ] No [ ]

(b) If "yes" describe services or functions:

8. Name and address of charterer:

9. If charter is single entity, indicate purpose of flight: ————

10. On what date was the charter contract executed? ————

11. If the charter is pro rata, has a copy of Part 212 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes [ ] No [ ]

Part II—To be completed for pro rata or mixed charters only.

Section A—To be supplied by travel agent, or where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements).

1. What specific services have been or will be provided by agent to charterer on a group basis? ————

2. What specific services have been or will be provided by agent to individual participants in the proposed charter? ————

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes [ ] No [ ]

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes [ ] No [ ] If answer is "yes" explain: ————

WARRANTY [1]

I, ————(Name) represent and warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 212 of the Board's Economic Regulations.

(Date) ————

(Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).)

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes:

2. What activities are sponsored by the chartering organization?

3. When was the organization founded?

4. Qualification or requirements for membership in organization and membership fee, if any: ————

5. Has there been any reference to prospective charter flights in soliciting new members for the charter organization? Yes [ ] No [ ]

6. State where a list of members is available for inspection. ————

7. Attach list of prospective passengers (including "standbys" and one-way passengers designated as such), showing for each:

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[1] Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., 1001.

(a) name, address, and telephone number; (b) relationship of such person to chartering organization, i.e., member, spouse, dependent child, parent or "special" (a person whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver); (c) if such person is related to a member who is not a prospective passenger, the member's name, address, and telephone number; and (d) date member joined or last renewed a lapsed membership.

Note: This is a list of prospective passengers and does not necessarily have to represent the passengers actually to be carried. The list is to be amended, if passengers are dropped or added before flights and the certification required by § 212.45 must be attached to the list.

8. What are requirements for participation in charter? ________________

____

9. How were prospective participants for charter solicited (attach any solicitation material)? ________________

____

10. Will there be any participants in the charter flight other than (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group residing in the same household with the member? Yes [ ] No [ ]

11. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than 6 months prior to flight date?[3] Yes [ ] No [ ] If answer is "yes", give names of participants who will not have been members for 6 months: ________________

____

12. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration, and scope of activity: ________________

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____

13. Estimated receipts: ________ (Pro rata charge) × ________ (No. of passengers) = $________ (Estimated receipts from charter)

Estimated receipts from other sources, if any: ________________

____

Explain: ________________

____

(a) Total receipts: $——.

Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

Item	*Amount*	*Payable to*

(b) Total expenditures: $——.

Explain any difference between (a) and (b): ________________

____

14. Are any of the expenses included in Item 13 above, to be paid to any members of the chartering organization? Yes [ ] No [ ] If "yes" state how much, to whom and for what services: ________________

____

15. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes [ ] No [ ]

If "yes" explain fully: ________________

____

____

16. Will any person in the group (except children under 2 years) be transported without charge? Yes [ ] No [ ]

17. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under 12 years old? Yes [ ] No [ ]

18. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction: ________________

____

19. If four or more round trips are contracted for, will each group move as a unit in both directions? Yes [ ] No [ ]

20. If charters have been performed for organization during past 5 years, give dates and name of carrier performing charters: ________________

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[3] Not applicable to school charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

____

____

21. Has a copy of Part 212 "Charter Trips by Foreign Air Carriers" of the Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes [ ] No [ ]

22. Attach copies of all announcements of the chartering organization in connection with the charter issued after the charter contract is signed.

WARRANTY OF CHARTERER [4]

I, ______________ (Name) and ______________(Name) represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operation, in a manner consistent with Part 212 of the Board's economic regulations. I (we) further represent and warrant that the charterer has not offered charter flights simultaneously with the solicitation of membership in the chartering organization in any mass media advertising or notice or through direct mailing or public posters. I (we) further represent and warrant that all charter participants have been informed of eligibility and cost requirements of Part 212 and that a flight may be canceled if ineligible participants are included.

(Date) ______________

____

(Signature—person within organization in charge of charter arrangements)

____

(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by school official not directly involved in charter.)

WARRANTY OF AIR CARRIER [4]

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts warranted by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 212 of the Board's Economic Regulations.

(Date) ______________

____

(Signature and title of authorized official of aircarrier)

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-686, 36 FR 7449, Apr. 20, 1971, as amended by ER-776, 37 FR 24167, Nov. 15, 1972; ER-1128, 44 FR 33055, June 8, 1979. Redesignated by ER-1220, 46 FR 28375, May 26, 1981]

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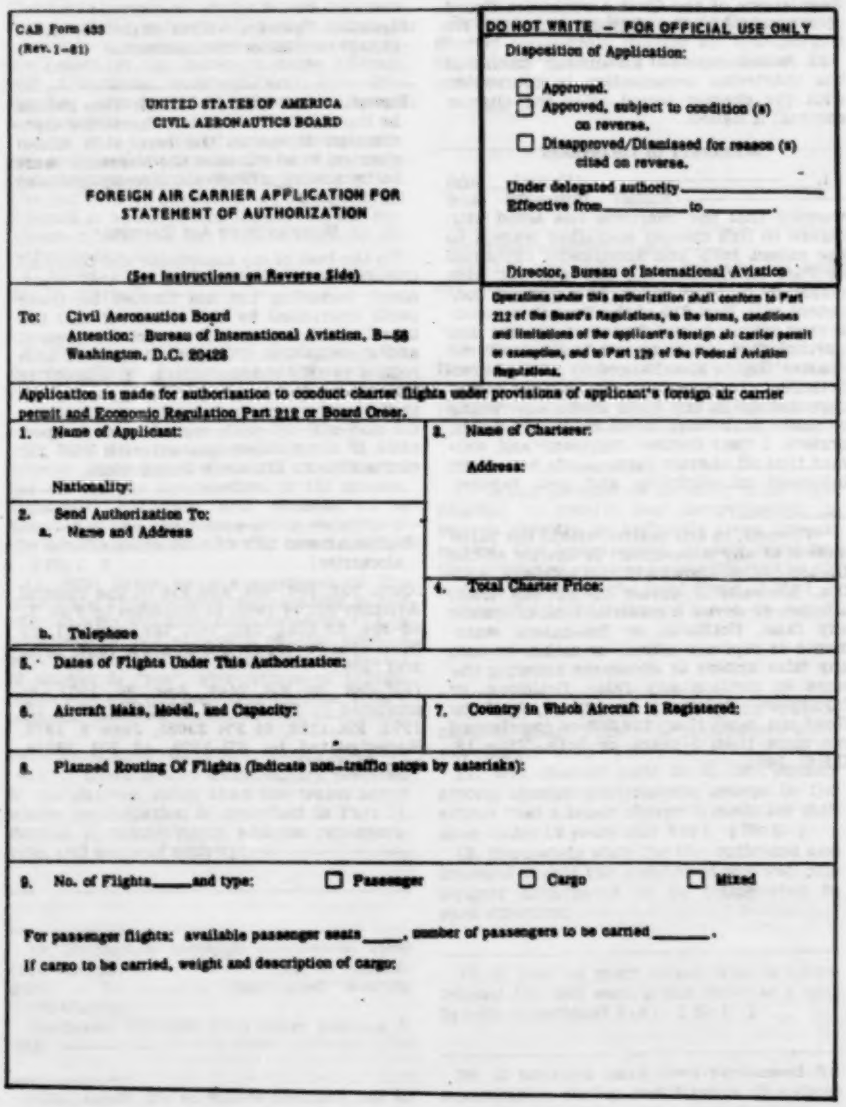
[4] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., 1001.

APPENDIX C—CAB FORM 433



CAB Form 433
(Rev. 1-81)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

FOREIGN AIR CARRIER APPLICATION FOR
STATEMENT OF AUTHORIZATION

(See Instructions on Reverse Side)

DO NOT WRITE – FOR OFFICIAL USE ONLY

Disposition of Application:

☐ Approved.
☐ Approved, subject to condition (s) on reverse.
☐ Disapproved/Dismissed for reason (s) cited on reverse.

Under delegated authority ______
Effective from ______ to ______.

Director, Bureau of International Aviation

To: Civil Aeronautics Board
Attention: Bureau of International Aviation, B-58
Washington, D.C. 20428

Operations under this authorization shall conform to Part 212 of the Board's Regulations, to the terms, conditions and limitations of the applicant's foreign air carrier permit or exemption, and to Part 129 of the Federal Aviation Regulations.

Application is made for authorization to conduct charter flights under provisions of applicant's foreign air carrier permit and Economic Regulation Part 212 or Board Order.

1. Name of Applicant:

Nationality:

2. Send Authorization To:
a. Name and Address

b. Telephone

3. Name of Charterer:

Address:

4. Total Charter Price:

5. Dates of Flights Under This Authorization:

6. Aircraft Make, Model, and Capacity:

7. Country in Which Aircraft is Registered:

8. Planned Routing Of Flights (indicate non-traffic stops by asterisks):

9. No. of Flights ____ and type: ☐ Passenger ☐ Cargo ☐ Mixed

For passenger flights: available passenger seats ____, number of passengers to be carried ______.

If cargo to be carried, weight and description of cargo:

10. If Application is Being Filed Late, State Reasons for Lateness:

11. Description of Chartering Organization and Purpose of Flights:

12. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein?__________; if so, has the fact of such reciprocity been established with the Civil Aeronautics Board?______________ If the fact has not been established with the Civil Aeronautics Board, provide documentation to establish such reciprocity.

13. Other information requested by the Board:

CERTIFICATION

I hereby certify that the charter flights for which authority is sought herein conform to the requirements of the Economic and Special Regulations and applicable orders of the Civil Aeronautics Board governing charters.

____________________ (Date)

____________________ (Signature and title of authorized officer)

INSTRUCTIONS

1. Prepare an original and two copies of this application according to Section 212.5 of the Board's Regulations, or Order of the Board requiring use of this form. If extra space is required to complete an item, continue on a separate sheet of paper.

2. Send the application to: "Civil Aeronautics Board, Attention: Bureau of International Aviation, B-58, Washington, D.C. 20428 (and if required by regulation or Order to Director of Flight Operations, Federal Aviation Administration, Washington, D.C. 20591).

DO NOT WRITE – FOR OFFICIAL USE ONLY

Exercise of this authorization is subject to the following condition(s):

OR Application is disapproved/dismissed for the following reason (s):

[ER-1220, 46 FR 28376, May 26, 1981]

PART 213—TERMS, CONDITIONS AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS

Sec.
213.1 Applicability.
213.2 Reports of traffic data.
213.3 Filing and approval of schedules.
213.4 [Reserved]
213.5 Filing of schedules and applications for approval of schedules; filing and service of airport notices and applications for permission to use an airport; procedure thereon.
213.6 Compliance.
213.7 Filing requirements for adherence to Montreal agreement.

AUTHORITY: Secs. 204, 402, Pub. L. 85-726, as amended, 72 Stat. 743, 757; (49 U.S.C. 1324, 1372).

SOURCE: ER-624, 35 FR 8881, June 9, 1970, unless otherwise noted.

§ 213.1 Applicability.

This regulation sets forth terms, conditions, and limitations applicable to section 402 permits authorizing foreign direct air carriers to engage in scheduled foreign air transportation. Unless such permits or the orders issuing such permits otherwise provide, the exercises of the privileges to engage in scheduled foreign air transportation granted by any such permit shall be subject to the terms, conditions, and limitations as are set forth in this part, and as may from time to time be prescribed by the Board. Notwithstanding the foregoing, this regulation shall not apply to permits of Canadian air carriers authorizing casual, occasional, and infrequent flights with small aircraft across the Canada-United States border or the Canada-Alaska border; and those permits shall not be subject to the terms, conditions, and limitations in this part.

[ER-680, 36 FR 7306, Apr. 17, 1971]

§ 213.2 Reports of traffic data.

The Board may at any time require any foreign air carrier to file with the Board traffic data disclosing the nature and extent of such carrier's engagement in transportation between points in the United States and points outside thereof. The Board will specify the traffic data required in each such instance. Interested persons seeking reconsideration of a Board determination under this section may file a petition pursuant to Rule 37 of Part 302 within 10 days after Board action.

§ 213.3 Filing and approval of schedules.

(a) In the absence of provisions to the contrary in the permit and of Board action pursuant to this section, a foreign air carrier may determine the schedules (including type of equipment used) pursuant to which it engages in transportation between points in the United States and points outside thereof.

(b) In the case of a foreign air carrier permit for scheduled air transportation which is not the subject of an air transport agreement between the United States and the government of the holder, the Board, if it finds that the public interest so requires, may with or without hearing order the foreign air carrier to file with it within 7 days after service of such order, an original and three copies of any or all of its existing schedules of service between any point in the United States and any point outside thereof, and may require such carrier thereafter to file an original and three copies of any proposed schedules of service between such points at least 30 days prior to the date of inauguration of such service. Such schedules shall contain all schedules of aircraft which are or will be operated by such carrier between each pair of points set forth in the order, the type of equipment used or to be used, the time of arrival and departure at each point, the frequency of each schedule, and the effective date of any proposed schedule.

(c) In the case of any foreign air carrier permit for scheduled air transportation which is the subject of an air transport agreement between the United States and the government of the holder, the Board may with or without hearing issue an order, similar to that provided for in paragraph (b) of this section, if it makes the findings provided for in that subsection and, in addition, finds that the government or aeronautical authorities of the government of the holder, over the objections of the United States Government, have: (1) Taken action which impairs, limits, terminates, or denies operating rights, or (2) otherwise denied or failed to prevent the denial of, in whole or in part, the fair and equal opportunity to exercise the operating rights, provided for in such air transport agreement, of any U.S. air carrier designated thereunder with respect to flight operations to, from, through, or over the territory of such foreign government.

(d) The carrier may continue to operate existing schedules, and may inaugurate operations under proposed schedules 30 days after the filing of such schedules with the Board, unless the Board with or without hearing issues an order, subject to stay or disapproval by the President of the United States within 10 days after adoption, notifying the carrier that such operations, or any part of them, may be contrary to applicable law or may adversely affect the public interest. If the notification pertains to a proposed schedule, service under such schedule shall not be inaugurated; if the notification pertains to existing scheduels, service under such schedules shall be discontinued on the date specified in the Board's order. Such date shall be not less than ten days after adoption of the Board's order unless affirmative Presidential approval is obtained at an earlier date.

(e) No petitions for reconsideration may be filed with respect to Board orders issued pursuant to paragraph (b), (c), or (d) of this section. Nevertheless, if the Board serves a notification under paragraph (d) of this section, the carrier may make application to the Board for approval of any or all existing or proposed schedules, pursuant to the provisions of § 213.5. The Board may with or without hearing withdraw, in whole or in part, its notification at any time and may permit existing or proposed schedules to be operated for such period or periods as the Board may determine.

(f) The date of service on a foreign air carrier of orders and notifications pursuant to this section shall be the date of mailing thereof, by certified or registered mail, to the agent designated by the foreign air carrier pursuant to section 1005(b) of the Act or, if the foreign air carrier has failed to designate an agent, the date of mailing by registered air mail to the foreign air carrier's home office.

[ER-624, 35 FR 8881, June 9, 1970, as amended by ER-870, 39 FR 30843, Aug. 26, 1974; ER-1107, 47 FR 46495, Oct. 19, 1982]

§ 213.4 [Reserved]

§ 213.5 Filing of schedules and applications for approval of schedules; filing and service of airport notices and applications for permission to use an airport; procedure thereon.

(a) *Number of copies and certificate of service.* An original and three copies of each airport notice or each schedule, and an original and 19 copies of each application for permission to use an airport (§ 213.4(b)) or application for approval of schedules (§ 213.3(e)) shall be filed with the Board, each setting forth the names and addresses of the persons, if any, required to be served, and stating that service has been made on all such persons by personal service or by registered or certified mail (if the addressee is located within the United States, its territories and possessions) or by registered air mail (if the addressee is located outside the United States, its territories and possessions) and the date of such service. In the case of service by mail, the date of mailing shall be considered the date of service. Each copy of an airport notice or application for permission to use an airport served pursuant to this part shall state that such service is made pursuant to this part.

(b) *Pleadings by interested persons.* Any interested person may file and serve upon the foreign air carrier a memorandum in opposition to, or in support of, schedules, airport notice or application for permission to use an airport or for approval of schedules within 15 days of the filing of the airport notice, within 20 days of the filing of the application for permission to use an airport, or within 10 days of the filing of schedules or applications for approval of schedules. In the case of an airport notice or application for permission to use an airport, memoranda in support of or in opposition thereto shall also be served on the persons described in § 213.4(c). All memoranda shall set forth in detail the reasons for the position therein taken with a statement of economic data and other matters which it is desired that the Board shall officially notice, and affidavits stating such other facts as are relied upon. Memoranda filed pursuant to this paragraph shall contain a certificate of service in the form prescribed by paragraph (a) of this section. An executed original and three copies in the case of schedules or airport notices, 19 copies in the case of applications for permission to use an airport or approval of schedules, shall be filed with the Docket Section of the Board. Unless ordered by the Board upon application or upon its own motion, further pleadings will not be entertained.

(c) *Determination and petitions for reconsideration.* The Board may make its determination upon the application and other pleadings or, in its discretion, after hearing. Interested persons seeking reconsideration of the Board's determination on an application for permission to use an airport or approval of schedules may file a petition pursuant to Rule 37 of Part 302 of this chapter within 10 days of Board action. Any interested person may file an answer in opposition to, or in support of, the petition within 10 days after it is filed. An executed original and 19 copies of such petition for reconsideration or memorandum shall be filed with the Docket Section. Petitions for reconsideration of the Board's determination on an application for permission to use an airport and answers thereto shall be served upon the relevant persons described in § 213.4(c), the foreign air carrier, and any other persons who have filed pleadings in the proceeding. All petitions for reconsideration shall contain a certificate of service in the form prescribed by paragraph (a) of this section. Unless ordered by the Board upon application or upon its own motion, further pleadings will not be entertained.

[ER-624, 35 FR 8881, June 9, 1970, as amended by ER-644, 35 FR 14382, Sept. 12, 1970]

§ 213.6 Compliance.

Any violation by the foreign air carrier of applicable provisions of Title IV of the Act or of orders, rules or regulations issued thereunder, or of the terms, conditions or limitations applicable to the exercise of the privileges granted by the permit shall constitute a failure to comply with the terms, conditions and limitations of such permit: *Provided,* That upon a showing that a violation of a provision not mandatorily prescribed by law resulted from the observance by the holder of an obligation, duty or liability imposed by a foreign country, the Board may excuse the violation.

§ 213.7 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a foreign air carrier permit or other authority authorizing direct foreign scheduled air transportation that the holder have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, and comply with all other requirements of Part 203 of this chapter. That form can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(Approved by the Office of Management and Budget under control number 3024-0064)

[ER-1330, 48 FR 8050, Feb. 25, 1983, as amended by ER-1346, 48 FR 31014, July 6, 1983]

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Sec.
214.1 Applicability.
214.2 Terms of service.

§ 214.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter foreign air transportation pursuant to foreign air carrier permits authorizing the holder to engage in charter transportation only.

(Sec. 204, 402, Pub. L. 85-726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1371)

[ER-1223, 46 FR 28379, May 26, 1981]

§ 214.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of Part 212 of this chapter.

(Sec. 204, 402, Pub. L. 85-726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1371)

[ER-1223, 46 FR 28379, May 26, 1981]

PART 215—NAMES OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Sec.
215.1 Applicability.
215.2 Use of name.
215.3 Change of name or use of trade name.
215.4 Procedure in cases of similarity of names.

AUTHORITY: Secs. 101(3), 204(a), 401, 402, 411, 416, 417, Pub. L. 85-726, 72 Stat. 737, 743, 754, 757, 769, 771, 76 Stat. 145; 49 U.S.C. 1301, 1324, 1371, 1372, 1381, 1386, 1387, unless otherwise noted.

SOURCE: ER-386, 28 FR 9201, Aug. 21, 1963, unless otherwise noted.

§ 215.1 Applicability.

This part applies to all direct air carriers and direct foreign air carriers, except air taxi operators.

[ER-1264, 46 FR 56601, Nov. 18, 1981]

§ 215.2 Use of name.

In holding out to the public and in performing air transportation services, an air carrier or foreign air carrier subject to this part shall use only the name in which its operating authorization is issued, or a name the use of which has been authorized by the Board. Except as provided in §§ 221.21(j) and 221.35(d) of this chapter (Economic Regulations), minor variations in the use of this name including abbreviations, contractions, initial letters, or other variations of such name which are readily identifiable therewith are permitted. Slogans and service marks shall not be considered names for the purposes of this part, and their use is not restricted hereby.

§ 215.3 Change of name or use of trade name.

(a) *Applications.* Any carrier subject to this part which desires to change the name in which its operating authorization has been issued or a name the use of which has previously been authorized by the Board, or to use a trade name, may file with the Board an application for permission to do so. The application shall comply with §§ 302.3 and 302.4 of this chapter (Board's Procedural Regulations) but need not be served on any person unless the Board so directs.

(b) *Disposition.* Upon proceedings pursuant to § 215.4 (a), (b), (c) and (d), the Board will grant permission for the change of name or use of a trade name if it finds that the use of such name is not contrary to the public interest. Any such permission may be conditioned upon the abandonment of the use of the currently authorized name or names in air transportation service by the party concerned, or otherwise be made subject to such reasonable terms and conditions as the Board may find necessary to protect the public interest. If the name originally applied for is one in which the applicant has a prior business interest, the applicant may be permitted by the Board to advertise his affiliation with his other business, even though his operating authority has not been issued under that original name because of the public confusion problem. For example:

(1) If an applicant is in business as a surface freight forwarder under a name which might cause confusion, and he wishes to organize a new company for his air freight forwarder business, he may be permitted to represent to the public that the new company is an "affiliate of ————, a surface freight forwarder." The new company name shall always be displayed more prominently than the name of the company with which the carrier is affiliated, and, as illustrated, the nature of the business of the company with which the new company is affili-

ated shall always be displayed as prominently as its name.

(2) If an applicant intends to undertake air transportation activities under an existing company name which would cause confusion, he may be required to hold out his air transportation activities under a trade name. However, it may be necessary to include a requirement that the existing company name as well as the trade name appear on all airway bills and contracts entered into by the company, as well as on all insurance policies in a form which will obviate any possible confusion, such as:

—Forwarding Co.
d/b/a
Ajax Air Freight

In such instances, the trade name selected shall at all times be displayed more prominently than the company name, and the company name shall not be used in any way for advertising purposes, unless the fact that there is no affiliation with another air carrier is prominently spelled out.

(c) *Montreal Agreement.* Each application for a change in name under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (CAB 18900) (CAB Form 263) signed by the carrier using the proposed name change. Upon approval of the application, the Board will place a copy of the signed CAB Form 263 in Docket 17325.

(The reporting requirement in paragraph (c) was approved by the Office of Management and Budget under control number 3024-0064)

(Secs. 101, 204, 401, 402, 411, 416, 417, Pub. L. 85-726, 72 Stat. 737, 743, 754, 757, 769, 771; 76 Stat. 145; 49 U.S.C. 1301, 1324, 1371, 1372, 1381, 1386, 1387)

[ER-386, 28 FR 9201, Aug. 21, 1963, as amended by ER-1331, 48 FR 8050, Feb. 25, 1983; ER-1347, 48 FR 31014, July 6, 1983]

§ 215.4 Procedure in cases of similarity of names.

(a) *Initiation of proceeding.* When processing an application for an exemption to perform air transportation services, a letter of registration, an operating authorization, or for any other operating rights except certificates of public convenience and necessity and foreign air carrier permits, or when processing an application for permission to change names or to use a trade name, the Board will compare the proposed name with a list of names used by existing and former air carriers and foreign air carriers, other than air taxi operators. Names not used for a considerable length of time may be deleted from the list. If it appears that a possibility of public confusion with a name or names on the list exists, the Board will notify the carrier or carriers which may be affected because of present or past use of such names by themselves or by carriers which they have absorbed. The notification will identify the applicant and state its proposed name or the name requested, area of operation, location of agencies and terminals, type of business, and other pertinent matters. A copy of this notification will also be sent to the applicant.

NOTE: Non-action under this provision shall not be construed as a determination by the Board that there is no confusion similarity or as an adjudication of any rights or liabilities.

(b) *Answer.* Within 15 days the notified carrier or any other interested person may submit to the Board and serve upon the applicant an answer in writing setting forth its position as to whether public confusion will result because of similarity of names, along with relevant factual information. Such answers should set forth facts with respect to the following matters, among others:

(1) The similarity of the names; (2) expected geographical overlap and relationship between the two carriers; (3) comparison of the types of operations of the respective carriers; and (4) the extent to which any or all of the words in the applicant's name or the name requested, or such words in any combination, have been identified by the public, with the other carrier. In this connection, the statement should point out (i) length of time the carrier has been operating; (ii) other carriers using the same words or combinations of them in their name; and (iii) relevant court or Board decisions concerning confusingly similar names.

Where there is no notification by the Board, any interested person may file an answer within 30 days after the date of filing of the application.

(c) *Reply.* Within 15 days from the date of service of the answer, the applicant may submit a reply to the Board and serve it upon the persons who have filed answers.

(d) *General requirements of pleadings.* Answers and replies shall be filed with the Board in accordance with the requirements of §§ 302.3 and 302.4 of this chapter (Board's Procedural Regulations).

(e) *Determination in case of applications for operating authority.* If the Board determines that an applicant's name will not result in public confusion the application will be examined and acted upon according to its other merits. If it is determined that said name may result in public confusion, the applicant may, within 15 days, (1) amend the application by changing the proposed name, or (2) withdraw the application, or (3) request that the issue of similarity of names be assigned for hearing or considered as an issue if there is to be a hearing on the merits of the application. If the applicant asks for a hearing, he shall outline the evidence to be presented on this issue and shall show the need for hearing thereon. The Board may thereupon deny said application without hearing, or assign it for hearing, or consider the proposed name as an issue if there is to be a hearing on the merits of the application. If the application is amended and returned to the Board with a new name, it will be treated as a new application for name purposes.

PART 216—COMMINGLING OF BLIND SECTOR TRAFFIC BY FOREIGN AIR CARRIERS

Sec.
216.1 Definitions.
216.2 Applicability.
216.3 Prohibition.
216.4 Special authorizations.
216.5 Existing permits.
216.6 Existing unauthorized operations.

AUTHORITY: Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324(a). Interpret or apply secs. 402 and 1108(b), 72 Stat. 757, 798; 49 U.S.C. 1372, 1508(b), unless otherwise noted.

SOURCE: ER-525, 33 FR 692, Jan. 19, 1968, unless otherwise noted.

§ 216.1 Definitions.

(a) As used in this part, unless the context otherwise requires:

"Act" means the Federal Aviation Act of 1958, as amended.

"Blind sector traffic" means revenue traffic, carried by a foreign air carrier on a flight operating in air transportation, which is enplaned at one foreign point and deplaned at another foreign point, where at least one of such points is not named as a terminal or intermediate point in the carrier's applicable foreign air carrier permit.

NOTE: This definition shall not be deemed to include the carriage of authorized "beyond homeland" traffic (i.e., traffic carried between a point named in a carrier's foreign air carrier permit and a point beyond a homeland terminal point authorized under such permit).

"Revenue traffic" means persons, property or mail carried for compensation or hire.

(b) Terms defined in section 101 of the Act have the meaning expressed in such definitions.

§ 216.2 Applicability.

This part sets forth the requirements applicable to foreign air carriers for obtaining a Special Authorization from the Board with respect to any deviation from an authorized foreign air transportation route for the purpose of commingling blind sector traffic with air transportation traffic carried pursuant to a foreign air carrier permit issued by the Board. The deviation by a foreign air carrier from its authorized route for the purpose of combined carriage to or from the United States of nonrevenue or other traffic, the carriage of which does not constitute engaging in foreign air transportation, is governed by the provisions of Part 375 of this chapter.

§ 216.3 Prohibition.

No foreign air carrier shall carry any blind sector traffic, as defined in this part, on any flight operating in air transportation pursuant to the authority of a foreign air carrier permit issued under section 402 of the Act, unless the combined carriage of such traffic has been specifically authorized by such permit, or by a Special Authorization issued under § 216.4.

§ 216.4 Special authorizations.

(a) *Applications.* Any foreign air carrier may apply to the Board for a Special Authorization, as required by this part, for the carriage of blind sector traffic on a particular flight, series of flights, or for a specified or indefinite period of time between specified points. Applications shall be submitted directly to the Board, addressed to the attention of the Director, Bureau of International Aviation. One original and two copies in conformity with the requirements of §§ 302.3(b) and 302.4 (b) and (c) of this chapter shall be filed. The applications shall contain a proper identification of the applicant; the flight or flights upon which it is proposed to carry such blind sector traffic, including routing, nontraffic stops, and dates or duration of the authority sought; a full description of such traffic, and points between which such traffic will be carried; information or documentation as to whether the country of which the applicant is a national grants reciprocal privileges to U.S. carriers; and the reasons for requesting such authorization together with such additional information as will establish that the grant of such authority will otherwise be in the public interest. Such additional information as may be specifically requested by the Board shall also be furnished.

(b) *Service.* Applications shall be served upon each direct U.S. air carrier certificated to engage in individually ticketed or waybilled foreign air transportation over any portion of the route to which the application pertains, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in § 302.8 of this chapter. Notice of such applications shall also be published in the Board's Weekly List of Applications Filed.

(c) *Memoranda in support or opposition.* Any interested person may file a memorandum in support of or in opposition to the grant of an application. Such memorandum shall set forth in detail the reasons why it is believed that the application should be granted or denied and shall be accompanied by such data, including affidavits, which it is desired that the Board consider. Copies of the memorandum shall be served upon the applicant. Nothing in this subparagraph shall be deemed to preclude the Board from granting or denying an application when the circumstances so warrant without awaiting the filing of memoranda in support of or in opposition to the application.

(d) *Time for filing.* (1) Applications seeking authority to engage in blind sector operations for a period of 3 months or longer, shall be submitted at least 60 days in advance of the proposed commencement of such operations. Memoranda in response to such an application shall be submitted within 15 days after the date of filing thereof.

(2) Applications seeking authority to engage in blind sector operations for a period less than three months shall be filed at least 20 days in advance of the proposed commencement of such operations, and memoranda in response thereto within 7 days after the date of filing thereof: *Provided,* That the Board may consider late filed applications upon a showing of good cause for failure to adhere to this requirement.

(e) *General procedural requirements.* Except as otherwise provided herein, the provisions of Part 302, Subpart A, of this chapter shall apply to the extent applicable.

(f) *Issuance of Special Authorization.* A Special Authorization authorizing the carriage of blind sector traffic will be issued only if the Board finds that the proposed carriage is fully consistent with applicable law and this part, and that grant of such authority would be in the public interest. The application may be granted or denied in whole or in part without hearing, and a Special Authorization made subject to any conditions or limitations, to the extent that such action is deemed by the Board to be in the public interest. Special Authorizations are not transferable.

(g) *Nature of the privilege conferred.* A Special Authorization issued pursuant to this section shall constitute a privilege conferred upon a carrier, which may be enjoyed only to the extent that its continued exercise remains in the interest of the public. Accordingly, any Special Authorization issued pursuant to this section may be revoked, suspended, amended or restricted without hearing.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324); Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

[ER-525, 33 FR 692, Jan. 19, 1968, as amended by ER-910, 40 FR 23844, June 3, 1975; ER-1060, 43 FR 34117, Aug. 3, 1978]

§ 216.5 Existing permits.

"Foreign aircraft permits" issued by the Board under the provisions of Part 375 of the Board's Special Regulations, authorizing the combined carriage of blind sector traffic as defined in this part, shall continue in effect in accordance with their terms until their expiration date unless sooner terminated, revoked or modified by the Board. Such permits shall, upon the effective date of this part, be deemed to constitute a Special Authorization issued pursuant to § 216.4.

§ 216.6 Existing unauthorized operations.

Notwithstanding the provisions of § 216.3, if within 30 days after the effective date of this part a carrier files an application for a Special Authorization to continue to perform existing blind sector operations which have been regularly performed by such carrier commencing on a date prior to August 9, 1967, such carrier may continue to engage in such blind sector operations until final decision by the Board on such application: *Provided*, That any such application shall, in addition to the requirements of § 216.4(a), contain a statement that the carrier is relying upon this section for continuance of preexisting blind sector operations, and shall fully describe such operations including the date inaugurated, and the frequency and continuity of performance.

PART 217—REPORTING DATA PERTAINING TO CIVIL AIRCRAFT CHARTERS PERFORMED BY U.S. CERTIFICATED AND FOREIGN AIR CARRIERS

Sec.

217.1 Definitions.
217.2 Applicability.
217.3 Report of civil aircraft charters performed by U.S. certificated and foreign air carriers.
217.4 Extension of filing time.
217.5 Certification.
217.6 Reporting instructions.
217.7 Waivers from reporting requirements.
217.8 Computer prepared submissions.

AUTHORITY: Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002, 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482.

SOURCE: ER-1320, 48 FR 3940, Jan. 28, 1983, unless otherwise noted.

§ 217.1 Definitions.

As used in this part:

"International charter" means a charter flight in air transportation that has flight stages with one or more terminals outside of territory under U.S. jurisdiction.

"Part charter" means the charter portion of a flight that includes both charter and scheduled service passengers.

"Small aircraft" means an aircraft designed to have a maximum passenger capacity of 60 or fewer seats, and a maximum payload capacity not more than 24,000 pounds.

§ 217.2 Applicability.

This part applies to foreign air carriers that are authorized by permit under section 402 of the Act to perform civil aircraft charters to or from the United States, to U.S. certificated air carriers performing international charters, and upon Board order, to foreign and other air carriers whose charter authority is conferred by exemption under Section 416. Operations conducted with small aircraft are exempt.

§ 217.3 Report of civil aircraft charters performed by U.S. certificated and foreign air carriers.

(a) Each U.S. certificated and foreign air carrier shall file CAB Form 217, entitled "Report of Civil Aircraft Charters Performed by U.S. Certificated and Foreign Air Carriers." CAB Form 217, as shown in Appendix A, may be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

(b) One copy of CAB Form 217 shall be filed for the quarters ending March 31, June 30, September 30, and December 31 of each calendar year. This report shall be submitted to the Reports Control Section, B-46a, Information Management Division, Office of Comptroller, Civil Aeronautics Board, Washington, D.C. 20428, so as to be received on or before the due dates indicated below. Due dates falling on a Saturday, Sunday or U.S. national holiday become effective the first following working day.

SCHEDULE OF DUE DATES

Filing for quarter ended	Due date
March 31	April 30.
June 30	July 30.
September 30	October 30.
December 31	January 30.

(c) If no charter flights were operated for the quarter to be reported, one copy of CAB Form 217 endorsed "no flights operated" shall nevertheless be filed. If charter flight operations have been discontinued indefinitely, one copy of CAB Form 217 endorsed "charter flight activity discontinued indefinitely" shall be filed and no further quarterly reports are required until such time as any charter flight is flown.

(Approved by the Office of Management and Budget under control number 3024-0005)

[ER-1320, 48 FR 3940, Jan. 28, 1983, as amended by ER-1334, 48 FR 12084, Mar. 23, 1983]

§ 217.4 Extension of filing time.

If circumstances prevent the filing of a report on or before the prescribed due date, a written request for an extension shall be filed with the Office of Comptroller at least 3 days in advance of the due date, except in an emergency, setting forth good reason to justify the granting of the extension and the date when the report can be filed. If a request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

§ 217.5 Certification.

The certificate in CAB Form 217 shall be signed by the person in charge of preparing the form, and shall apply to all accompanying reports and documents.

§ 217.6 Reporting instructions.

(a) A complete report shall be made on CAB Form 217 for all charter operations conducted by foreign air carriers to or from the United States and for all international charter operations conducted by U.S. certificated air carriers. Charter flights performed with small aircraft are exempt.

(b) Reporting of charter flights shall be on a charter type basis, by flight leg; that is, there will be a separate line of data for each flight leg of each charter type that is flown between a different set of points. If the charter type, flight leg, point of enplanement, point of deplanement and aircraft type utilized are identical, the reported data then shall be reported in the aggregate for the entire month, regardless of the number of flights flown between those points.

(c) Each CAB Form 217 submitted shall consist of three separate monthly reports within each of the respective calendar quarters. Data for each flight leg shall be reported for that month in which the flight leg began. The reported month, year, and name of carrier shall be inserted in the areas provided in the upper left hand corner of the report. The date code shall show the year first and then the month (*e.g.,* 8301 for January 1983). The carrier area shall show the carrier's standard 2-position alpha code as shown in the Official Airline Guide (OAG). If the carrier has no such code, it should leave those two positions blank until assigned a code by the Information Management Division, Office of Comptroller.

(d) Column (1) is reserved.

(e) Column (2) shall reflect the code number for the type of aircraft operated as provided in the Official Airline Guide (OAG). If no aircraft code exists in the OAG, the manufacturers type and model shall be provided so that the Information Management Division, Office of Comptroller can assign a code to be used in subsequent filings.

(f) Column (3) shall reflect the number of charter flights performed.

(g) Column (4) shall reflect each type of charter by the following codes:

EC—Entity-Cargo (Own Use)
EF—Cargo (Forwarder/Consolidator)
EP—Part Charter (Passenger)
PZ—Other Passenger Charters

Charters flown for the transportation of charter traffic of another air carrier or foreign air carrier shall be reported solely by the carrier in operational control of the aircraft, naming the type of charter, *e.g.,* EP, and traffic carried. Charters flown to accomodate the scheduled traffic of another direct air carrier shall be reported as entity charters.

(h) Column (5) shall identify each leg by the following numbers:

1—One-way flight.
2—Originating leg of round trip.
4—Return leg of round trip.

The outbound and return legs of any round trip group movement shall not be reported as one-way flight legs.

(i) Column (6) shall reflect any point at which a charter group, cargo load, or part of a group or load was enplaned. Departure points for ferry legs shall not be reported. Technical stops, *e.g.,* for departure formalities or refueling, shall not be reported. Where a diversion occurs for weather or other reasons, the planned rather than the actual point of enplanement shall be reported. The point of enplanement shall be identified by the three-letter airport code used in the OAG. If no OAG code exists, the point of enplanement shall be written out, in a footnote if necessary.

(j) Column (7) shall reflect any point at which a charter group, cargo load, or part of a group or load was deplaned. Arrival points for ferry legs shall not be reported. Technical stops, *e.g.,* for entry formalities or refueling, shall not be reported. Where a diversion occurs for weather or other reasons, the planned rather than the actual point of deplanement shall be reported. The point of deplanement shall be identified by the three-letter airport code used in the OAG. If no OAG code exists, the destination name shall be written out, in a footnote if necessary.

(k) Column (8) is reserved.

(l) Column (9) is reserved.

(m) Column (10) is reserved.

(n) Column (11) shall reflect the number of charter passengers transported. Part charter entries shall exclude scheduled passengers.

(o) Column (12) shall reflect the number of tons (to the nearest tenth of a short ton) of property enplaned in Entity-Cargo (Own Use) and Cargo (Forwarder/Consolidator) charters only.

§ 217.7 Waivers from reporting requirements.

A waiver from any reporting requirement contained in CAB Form 217 may be granted by the Civil Aeronautics Board upon its own initiative, or upon the submission of a written request to the Board's Office of Comptroller from any air carrier, when such a waiver is in the public interest. Each request for waiver must expressly demonstrate that: Existing peculiarities warrant a departure from the prescribed reporting; a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of the prescribed reporting; and the application of such alternative procedure will maintain or improve uniformity in reporting as between air carriers.

§ 217.8 Computer prepared submissions.

Carriers may submit the data required by CAB Form 217 on a comparable form prepared on automatic data processing equipment. Such substitute form shall be subject to prior approval by the Chief, Information Management Division, Office of Comptroller and shall contain the same column headings arranged in the same sequence as CAB Form 217.

PART 218—LEASE BY FOREIGN AIR CARRIER OR OTHER FOREIGN PERSON OF AIRCRAFT WITH CREW

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218.1 Definitions.
218.2 Applicability.
218.3 Prohibition against unauthorized operations employing aircraft leased with crew.
218.4 Condition upon authority of lessee.
218.5 Application for disclaimer of jurisdiction.
218.6 Issuance of order disclaiming jurisdiction.
218.7 Presumption.

AUTHORITY: Secs. 204(a), 402, Pub. L. 85-726, as amended, 72 Stat. 743, 757 (49 U.S.C. 1324, 1372).

SOURCE: ER-716, 36 FR 23148, Dec. 4, 1971, unless otherwise noted.

§ 218.1 Definitions.

For the purpose of this part the term "lease" shall mean an agreement under which an aircraft is furnished by one party to the agreement to the other party, irrespective of whether the agreement constitutes a true lease, charter arrangement, or some other arrangement.

§ 218.2 Applicability.

This part applies to foreign air carriers and other persons not citizens of the United States which, as lessors or lessees, enter into agreements providing for the lease of aircraft with crew to a foreign air carrier for use in foreign air transportation. For purposes of section 402 of the Act, the person who has operational control and safety responsibility is deemed to be the carrier, and is required to have appropriate operating authority.

[ER-716, 36 FR 23148, Dec. 4, 1971, as amended by ER-1250, 46 FR 47770, Sept. 30, 1981]

§ 218.3 Prohibition against unauthorized operations employing aircraft leased with crew.

(a) No foreign air carrier, or other person not a citizen of the United States, shall lease an aircraft with crew to a foreign air carrier for use by the latter in performing foreign air transportation unless either:

(1) The lessor holds a foreign air carrier permit issued under section 402 of the Act or an approved registration issued under Part 294 of this chapter, and any statement of authorization required by Part 212 of this chapter; or

(2) The Board has issued an exemption under section 416 of the Act specifically authorizing the lessor to engage in the foreign air transportation to be performed under the lease; or

(3) The Board has issued an order under § 218.6 disclaiming jurisdiction over the matter.

(b) For purposes of this part, an aircraft shall be considered to be leased with crew if:

(1) The pilot in command or a majority of the crew of the aircraft, other than cabin attendants:

(i) Is to be furnished by the lessor;

(ii) Is employed by the lessor;

(iii) Continues in the employ of the lessor in the operation of services other than those provided for in the agreement between the parties; or

(iv) Has been employed by the lessor prior to the lease, and the employment of whom by the lessee is coextensive with the period or periods for which the aircraft is available to the lessee under the lease; or

(2) The aircraft is operated under operations specifications issued to the lessor by the Federal Aviation Administration.

[ER-716, 36 FR 23148, Dec. 4, 1971, as amended by ER-1250, 46 FR 47770, Sept. 30, 1981; ER-1260, 46 FR 52598, Oct. 27, 1981]

§ 218.4 Condition upon authority of lessee.

In any case where a foreign air carrier leases from another foreign air carrier or other person not a citizen of the United States an aircraft with crew for use in performing foreign air transportation, it shall be a condition upon the authority of the lessee to perform such foreign air transportation that compliance be achieved with the requirements of this part.

§ 218.5 Application for disclaimer of jurisdiction.

The parties to a lease with crew as described in § 218.3(b) may apply to the Board for an order disclaiming jurisdiction over the matter. The application shall be filed jointly by both parties to the lease, and shall generally conform to the procedural requirements of Part 302, Subpart A, of this chapter. It shall be served upon any air carrier providing services over all or any part of the route upon which air transportation services will be provided pursuant to the agreement. The application should set forth in detail all evidence and other factors relied upon to demonstrate that true operational control and safety responsibility for the air transportation services to be provided are in the hands of the lessee rather than the lessor. A copy of the agreement and all amendments thereof, as well as a summary interpretation of its pertinent provisions, shall be included with the applications. Any interested person may file an answer to the application within 7 days after service hereof. Until the Board has acted upon the application, no operations in foreign transportation shall be performed pursuant to the agreement.

§ 218.6 Issuance of order disclaiming jurisdiction.

If the Board finds that true operational control and safety responsibility will be vested in the lessee and not in the lessor (i.e., that the lease transaction is in substance a true lease of aircraft rather than a charter or series of charters), and that the performance of the operations provided for in such lease will not result in the lessor's being engaged in foreign air transportation, it will issue an order disclaiming jurisdiction over the matter. Otherwise the application for disclaimer of jurisdiction will be denied.

§ 218.7 Presumption.

Whether under a particular lease agreement the lessor of the aircraft is engaged in foreign air transportation is a question of fact to be determined in the light of all the facts and circumstances. However, in circumstances where the lessor furnishes both the aircraft and the crew, there is a presumption that ture operational control and safety responsibility are exercised by the lessor, and that the agreement constitutes a charter arrangement under which the lessor is engaged in foreign air transportation. The burden shall rest upon the applicants for disclaimer of jurisdiction in each instance to demonstrate by an appropriate factual showing that the operation contemplated will not constitute foreign air transportation by the lessor.

PART 221—TARIFFS

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AUTHORITY: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482, unless otherwise noted.

SOURCE: ER-439, 30 FR 9439, July 29, 1965, unless otherwise noted.

Subpart A—General

§ 221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Board pursuant to section 403 of the act shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part.

§ 221.2 Board may direct reissue of publications.

The Board for good cause shown, may direct the reissue of any tariff publication, concurrence, or power of attorney at any time.

§ 221.3 Carrier's duty.

(a) *Must file tariffs.* Except as set forth in paragraph (d) or (e) of this section, every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information as the Board shall by regulation prescribe. Any tariff so filed which is not consistent with section 403 of the act and such regulations may be rejected. Any tariff so rejected shall be void.

(b) *Must observe tariffs.* No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for air transportation or for any service in connection therewith, than the rates, fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Board to be specified in such tariffs, except those specified in such tariffs.

(c) *No relief from violations.* Nothing contained in this part shall be construed as relieving any air carrier or foreign air carrier from liability for violations of the act, nor shall the filing of a tariff, or amendment thereto, relieve any air carrier or foreign air carrier from such violations or from violations of regulations issued under the Act.

(d) *Exemption authority.* Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 403 of the Act and any requirement of this chapter to file, and shall not file with the Board, tariffs for operations under the following provisions:

(1) Part 291, *Domestic Cargo Transportation,* except to the extent noted in § 291.31(a)(1);

(2) Part 296, *Indirect Air Transportation of Property;*

(3) Part 297, *Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;*

(4) Part 298, *Exemption for Air Taxi Operations,* except to the extent noted in § 298.11(b);

(5) Part 380, *Public Charters;*

(6) Part 207, *Charter Trips and Special Services;*

(7) Part 208, *Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation;*

(8) Part 212, *Charter Trips by Foreign Air Carriers.*

(e) *Domestic passenger fare tariffs.* For interstate and overseas air transportation of passengers, the following provisions apply to each pair of points served by an air carrier:

(1) The carrier shall file a tariff stating an unrestricted coach fare for service between those points. The carrier may also file tariffs describing other fare categories (*e.g.,* first class, supersaver). Such tariffs shall include the availability conditions applicable to each fare category filed. The carrier shall not charge any passenger more than the fare on file for the fare category purchased by the passenger, but may charge less than that fare. If there is no fare on file for the fare category purchased by the passenger, the carrier shall not charge more than the unrestricted coach fare on file, except for service that includes additional amenities.

(2) The carrier shall also file a tariff stating the amount to be used for construction of joint fares for interline service, if that amount is different from the unrestricted coach fare on file. Joint fares constructed from such filed amounts shall be binding on carriers and ticket agents except for interline routings where the carriers have agreed to charge lesser amounts.

(3) Ticket agents shall not charge any passenger more than the fare on file for the fare category purchased by the passenger, but may, except as set forth in paragraph (e)(2) of this section, charge less than that fare. If there is no fare on file for the fare category purchased by the passenger, the ticket agent shall not charge more than the unrestricted coach fare on file except for service that includes additional amenities. A carrier may arrange, by contract with its ticket agents, to specify fixed fares to be charged by the ticket agents, and may provide notice of such arrangements in its tariffs. Failure of ticket agents to observe such arrangements will not, however, be considered a violation of the Act or of Board rules. The Board does not hereby approve such contractual arrangements under section 412 of the Act or exempt them from the antitrust laws under section 414.

(4) Air carriers and ticket agents are exempt from the requirements of section 403(a) and (b)(1) of the Act and the other provisions of this part to the extent necessary to allow the filing of tariffs and the charging of prices for interstate and overseas air transportation as set forth in this paragraph (e).

(5) In this paragraph, "charge" includes "charge," "collect," "demand," and "receive," as those terms are used in section 403 of the Act.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732 (49 U.S.C. 1302, 1324, 1373, and 1386))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1125, 44 FR 33059, June 8, 1979; ER-1246, 46 FR 46794, Sept. 22, 1981; ER-1313, 48 FR 1941, Jan. 17, 1983]

§ 221.4 Definitions.

As used in this part, terms shall be defined as follows:

"Act" means the Federal Aviation Act of 1958, as amended.

"Board" means the Civil Aeronautics Board.

"Book tariff" means a tariff consisting of pages bound together in book form which conforms with the specifications applicable only to book tariffs.

"Carrier" means an air carrier or foreign air carrier subject to section 403 of the Act.

"Class rate" means a rate which is published to apply on articles or commodities assigned to a numbered class by a classification or an exception thereto.

"Fare" means the amount per passenger or group of persons stated in the applicable tariff for the transportation thereof and includes baggage unless the context otherwise requires.

"Fare tariff" means a tariff containing fares for the air transportation of person and may include baggage charges and provisions relating thereto.

"General commodity rate" means a rate which is published to apply on all articles or commodities except those which will not be accepted for transportation under the terms of the tariff containing such rate or of governing tariffs.

"General effective date" means the effective date shown on the title page of a tariff as required by § 221.31(a)(11), the effective date shown on title page of a supplement as required by § 221.112(b)(8), and the effective date shown on an original or revised page as required by § 221.22(b)(6). Also, see § 221.160.

"Item" means a small subdivision of a tariff designated as an item and identified by a number, a letter, or other definite method for the purpose of facilitating reference and amendment.

"Joint fare or rate" means a fare or rate that applies to transportation over the joint lines or routes of two or more carriers and which is made and published by arrangement or agreement between such carriers evidenced by concurrence or power of attorney.

"Joint tariff" means a tariff that contains joint fares or rates.

"Local fare or rate" means a fare or rate that applies to transportation over the lines or routes of one carrier only.

"Local tariff" means a tariff that contains local fares or rates.

"Loose-leaf tariff" means a tariff consisting of loose-leaf pages and conforming with the specifications applicable to loose-leaf tariffs as set forth in § 221.22.

"Original tariff," as applied to a loose-leaf tariff, refers to the tariff as it was originally filed exclusive of any supplements, revised pages, or additional original pages. "Original tariff," as applied to a book tariff, refers to the tariff as it was originally filed exclusive of any supplements.

"Passenger tariff" means a tariff containing fares, charges, or governing provisions applicable to the air transportation of persons and their baggage.

"Property tariff" means a tariff containing rates, charges, or governing provisions applicable to the air transportation of property (other than baggage accompanied or checked by passengers).

"Proportional rate (or fare)" means a rate (or fare) which may be used only to construct a through combination rate (or fare) on traffic which:

(1) Originates at a point beyond the point from which such proportional rate (or fare) applies, or

(2) Is destined to a point beyond the point to which such proportional rate (or fare) applies, or

(3) Both originates at a beyond point specified in (1) above and is destined to a beyond point specified in (2) above.

"Proportional tariff" or "basing tariff" means a tariff which contains proportional or basing rates or fares.

"Rates" means the amount per unit stated in the applicable tariff for the transportation of property, and includes "charge" unless the context otherwise requires.

"Rate tariff" means a tariff containing rates and charges for the air transportation of property, other than baggage accompanying or checked by passengers.

"Specific commodity rate" means a rate which is published to apply only on a specific commodity or commodities which are specifically named or described in the item naming such rate or in an item specifically referred to by such rate in the manner prescribed by § 221.75.

"Statutory Notice" means the number of days required for tariff filings in § 221.160(a).

"Tariff publication" means a tariff, a supplement to a tariff, or an original or revised page of a loose-leaf tariff, and includes an index of tariffs (Subpart L) and an adoption notice (§ 221.230).

"Through rate" means the total rate from point of origin to destination. It may be a local rate, a joint rate, or combination of separately established rates.

"Through fare" means the total fare from point of origin to destination. It may be a local fare, a joint fare, or combination of separately established fares.

"United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the

Territorial waters and the overlying air space thereof.

"Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732 (49 U.S.C. 1302, 1324, 1373, and 1386))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-947, 41 FR 11018, Mar. 16, 1976; ER-987, 42 FR 12422, Mar. 4, 1977; ER-1038, 43 FR 1322, Jan. 9, 1978; ER-1051, 43 FR 24277, June 5, 1978; ER-1125, 44 FR 33059, June 8, 1979]

§ 221.5 English language.

All tariff publications, powers of attorney, concurrences, revocations of powers of attorney or concurrences, letters of tariff transmittal, Special Tariff Permission applications, waiver applications and all other documents filed with the Board pursuant to this part shall be in the English language.

§ 221.6 [Reserved]

§ 221.7 Unauthorized air transportation.

Tariff publications shall not contain rates, fares, or charges, or their governing provisions, applicable to air transportation which the issuing or participating carriers are not authorized by the Board to perform, except where the Board expressly requests or authorizes tariff publications to be filed prior to the Board's granting authority to perform the air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with section 403 of the Act and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who Is Authorized To Issue and File Tariffs

§ 221.10 Carrier.

(a) *Local or joint tariffs.* A carrier may issue and file, in its own name, tariff publications which contain:

(1) Local rates or fares of such carrier only and provisions governing such local rates or fares, and/or

(2) Joint rates or fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing carrier as provided in § 221.210) and provisions governing such joint rates and fares. Provisions for account of an individual participating carrier may be published to govern such joint rates or fares provided § 221.38(k) is complied with.

A carrier shall not issue and file tariff publications containing local rates or fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint rates or fares.

(b) *Issuing officer.* An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Board on behalf of the issuing carrier and all carriers participating in the tariff publication. (See §§ 221.22(b)(7), 221.31(a)(12), and 221.112(b)(9) for location of issuing officer's name on tariff publications.)

§ 221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local rates or fares and/or joint rates or fares, and provisions governing such rates or fares, for account of carriers participating in such tariff publications, under authority of their powers of attorney given to such issuing agent as provided in § 221.220. The issuing agent shall file such tariff publications with the Board on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.

Subpart C—Form and Other Specifications of Tariff Publications

§ 221.20 Book or loose-leaf form.

Tariffs shall be prepared either in the form of book tariffs or in the form of loose-leaf tariffs. Supplements shall be prepared in book form in accordance with the specifications applicable to book tariffs.

§ 221.21 Specifications applicable to all tariff publications.

(a) *Paper and size.* Tariff publications shall be prepared on paper of good quality and strong texture 8½ by 11 inches.

(b) *Printing or other durable process; legible copies.* Tariff publications shall be plainly and legibly printed, planographed, mimeographed, sterotyped, or prepared by other similar durable process. Typewritten copies, carbon copies, proof sheets, or copies reproduced by hectograph (or similar process where the printed matter is subject to fading) shall not be used for filing or posting. Copies of tariff publications posted and filed shall be clear and legible in all respects.

(c) *Size of type.* The size of type shall not be less than 8-point bold or full face type except:

(1) As provided in § 221.31(a)(1), (C.A.B. number),

(2) Not less than 6-point bold or full face type may be used for explanations or reference marks (when such explanations appear on the page where the reference marks are used), for the cross reference required by § 221.35(a), the statement of filing with other countries required by § 221.24, and for column headings.

(d) *Margin.* A clear margin of not less than one inch without any printing shall be allowed on each page at the vertical binding edge of each tariff or supplement (including all revised or original pages of a loose-leaf tariff, notwithstanding that such pages shall contain no binding).

(e) *Alterations prohibited.* Alteration by writing, erasure, rubber stamps, or otherwise shall not be made in tariff publications.

(f) *Tables to be ruled or spaced.* When fares, rates, charges, and numbers or letters (used for rate bases or similar purposes) are shown in tables, such tables shall be systematically arranged, and ruled or spaced to prevent misapplication. When not more than three figures (digits) or letters, including reference marks, are employed to express each rate, fare, charge, rate base, etc., the column shall be not less than one-fourth of an inch in width with a proportionately greater width when more than three figures or letters, including reference marks, are so employed. Tables shall not contain more than six horizontal lines of printed matter without a horizontal break in the printed matter (either by a ruled line or by at least one blank space across the table) where it is necessary for the tariff user to refer to corresponding provisions on the same line in parallel columns.

(g) *Items and similar units to be in numerical order.* All items in a tariff publication shall be arranged in numerical or alphabetical order (with the lowest appearing first and the highest appearing last in the tariff). Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item in the tariff. A gap between item designations may be allowed for the addition of future items, for example, the items in an original tariff may be numbered Items Nos. 5, 10, 15, etc. The requirements of this paragraph are also applicable to units similar to items (see § 221.38(b) for designating rules).

(h) *Item, rule, or similar unit continued to next page.* Where an item, rule, or similar unit is commenced on one page and is continued on the following page, the notation "(continued on next page)" shall be shown at the bottom of the portion of the item, rule, or unit on the page from which it is continued, and the following page to which it is continued shall show the designation of the item, rule, or similar unit followed by "(continued)".

(i) *Tariff shall apply to persons or property (not both).* Rates and charges applicable to the transportation of property or provisions governing such rates or charges shall not be published in the same tariff with fares or charges applicable to the transportation of persons or provisions governing such fares or charges, except:

(1) [Reserved]

(2) A tariff applicable to passengers may include provisions applicable to passengers' baggage.

(3) A tariff applicable to property may include provisions applicable to persons accompanying shipments, provided that the carrier holds authority to transport such persons.

(j) *Carrier's name.* Wherever the name of a carrier appears in a tariff publication, such name shall be shown in full exactly as it appears in the carrier's certificate of public convenience and necessity, foreign air carrier permit, letter of registration, or whatever other form of operating authority of the Board to engage in air transportation is held by the carrier, or such other name which has specifically been authorized by order of the Board. Except as provided in § 221.35(d), a carrier's name may be abbreviated, provided the abbreviation is explained in the tariff.

(k) *Agent's name and title.* Wherever the name of an agent appears in tariff publications, such name shall be shown in full exactly as it appears in the powers of attorney given to such agent by the participating carriers and the title "Agent" or "Alternate Agent" (as the case may be) shall be shown immediately in connection with the name.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732 (49 U.S.C. 1302, 1324, 1373, and 1386))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1125, 44 FR 33059, June 8, 1979]

§ 221.22 Specifications applicable only to loose-leaf tariff publications.

(a) *No binding.* Pages of a loose-leaf tariff shall not be bound, but may be secured by a single staple or similar removable device when submitted to the Board for filing.

(b) *Information required on all interior pages.* Each original page and revised page following the title page of a loose-leaf tariff shall contain the following information in the location specified:

(1) In the upper left corner, the name of the issuing carrier or the name and title of the issuing agent.

(2) In the upper left corner, immediately below the name of the issuing carrier or agent, the title of the tariff.

(3) In the upper right corner, the C.A.B. number of the tariff.

(4) Immediately below the C.A.B. number, the original page number or the revised page number, as the case may be, and, if a revised page, the cancellation of preceding issues of that page (see paragraph (c) of this section and § 221.111).

(5) In the lower left corner, the issued date of the page.

(6) In the lower right corner, the effective date on which the fares, rates, charges, rules, and other provisions will become effective (see § 221.160). When a page which is published back-to-back with another page on the same leaf is reissued without change in its provisions, the same general effective date shall be shown on both pages: *Provided, however,* That the general effective date on the page which reissues matter without change shall allow at least the statutory notice (see § 221.60) and shall not be earlier than the general effective date of the prior issue of such page.

(7) Centered at the bottom of the page, the name, title and address of:

(i) The issuing officer (if tariff is issued by a carrier),

(ii) The issuing agent (if tariff is issued by an individual agent).

(iii) The official or employee of a corporate agent designated by such agent to issue and file tariff publications in the corporate agent's name (if tariff is issued by a corporate agent).

The information required by paragraph (b)(7) of this section may be omitted from interior loose-leaf pages provided that, whenever there is a change in such required information, a revision of the title page is issued and filed immediately to reflect the current name, title and address. When such information is omitted from interior pages, each letter of tariff transmittal tendering revised or original interior pages for filing shall bear the name, address and title of the issuing officer, individual agent, or corporate agent's designee shown on the latest issue of the title page at the time of filing; if a letter of tariff transmittal bears a different name, title or address from that on the latest issue of the title page, the pages submitted with such letter of tariff transmittal are in violation of these requirements.

(c) *Numbering pages.* The title page of an original loose-leaf tariff shall bear no page number but shall show the designation "Original Title Page" in the upper right corner of the page, a few spaces below the C.A.B. number and any tariff cancellation thereunder. The pages following the title page of an original loose-leaf tariff shall be designated as "Original Page 1", "Original Page 2", etc. (to be shown immediately below the C.A.B. number in the upper right corner of the page) and shall be consecutively numbered in one series of page numbers throughout the entire tariff, commencing with "Original Page 1" (see § 221.111 for numbering original and revised pages issued to the tariff after the original filing of the tariff with the Board).

(d) *Printing matter on one or both faces of each loose-leaf.* Tariff matter shall be published uniformly throughout a loose-leaf tariff either (1) on only one face of each leaf (reverse side of each leaf left entirely blank) or (2) commencing on page 1, on both faces of each leaf (2 pages back-to-back to each other). The method of publication used in an original tariff shall be used on all revised pages and added original pages filed to such tariff. When it is desired to change from one method to the other, the entire tariff shall be reissued.

(Secs. 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C. 1324, 1373, 1482, as amended)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1322, Jan. 9, 1978; ER-1104, 44 FR 9577, Feb. 13, 1979]

§ 221.23 Specifications applicable only to book tariffs and supplements.

(a) *Binding.* The pages of a book tariff or supplement shall be bound together in book form at the left binding edge of the tariff or supplement. The binding shall be by two or more staples, wire or other permanent book binding.

(b) *Numbering pages.* The title page of a book tariff or supplemental shall bear no page number. The pages following the title page of each book tariff or supplement shall be consecutively numbered as 1, 2, 3, 4, etc. (to be shown centered at the bottom of the page) and shall be consecutively numbered in only one series of page numbers throughout the entire tariff or supplement.

(c) *Information which is not to be shown on interior pages.* The pages following the title page of a book tariff or supplement shall not contain any of the information specified in § 221.22(b) except that, if desired, the name of the issuing carrier or agent, the number of the supplement, and the title of the tariff may be shown at the top of each interior page.

§ 221.24 Statement of filing with foreign government to be shown in air carriers' tariff publications.

(a) Every tariff publication issued by or on behalf of an air carrier which contains rates, fares, rules, or other tariff provisions which by treaty, convention, or agreement entered into between any foreign country and the United States are required to be filed with that foreign country, shall include a statement substantially as follows:

> The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The foregoing statement may be included upon each tariff publication by a symbol which is properly explained.

(c) The required statement may be omitted from a tariff publication which has been filed with the foreign country pursuant to its tariff regulations and which bears a tariff filing designation of the foreign country in addition to the C.A.B. number appearing on the tariff required by this part.

Subpart D—Contents of Tariff

§ 221.30 Arrangement and nature of contents.

(a) Except as otherwise provided in this part, tariffs shall contain only the contents prescribed by §§ 221.31 to 221.41, inclusive, which shall be arranged in each tariff in the following order:

(1) Title page (§ 221.31).

(2) Correction number check sheet (loose-leaf tariff only) (§ 221.32).

(3) Table of contents (§ 221.33).

(4) List of participating carriers (§ 221.34).

(5) Explanations of abbreviations, symbols, and reference marks (§ 221.35).

(6) Index of Commodities (property tariff only) (§ 221.36).

(7) Index of points (§ 221.37).

(8) Rules and regulations (§ 221.38).

(9) Classification ratings or exceptions to governing classification ratings (property tariff only) (§ 221.39).

(10) Statement of fares or rates for air transportation (§ 221.40).

(11) Routing (§ 221.41).

§ 221.31 Title page.

(a) *Contents.* Except as otherwise required in this part, or by other regulatory agencies, the title page of every tariff shall contain the following information to be shown in the order named in paragraphs (a) (1) through (12) of this section and shall contain no other matter:

(1) *C.A.B. number.* In the upper right-hand corner of the title page, the C.A.B. number of the tariff shall be shown in not less than 12-point bold face type. Except as provided in § 221.224(d), tariffs shall bear consecutive C.A.B. numbers in the series of the issuing carrier or the issuing agent. Each carrier and each agent shall issue and file tariffs consecutively in its own individual series of C.A.B. numbers, commencing with C.A.B. No. 1, and shall use only one series of C.A.B. numbers for all of the tariffs which it issues. Passenger tariffs and property tariffs shall be consecutively numbered in the same series of C.A.B. numbers and a separate series shall not be used for each type of tariff. C.A.B. numbers shall not bear prefixes or suffixes.

(2) *Tariff cancellation.* In the upper right-hand corner of the title page, immediately below the C.A.B. number, the cancellation of tariffs to be superseded shall be shown in the manner prescribed by § 221.113.

(3) *Issuing carrier or agent.* The name of the issuing carrier or the name and title of the issuing agent shall be shown in the upper central portion of the title page.

(4) *Title of tariff.* The title of the tariff, including the issuing carrier's or issuing agent's tariff serial number, if any, shall be shown in the upper central portion of the title page, below the name of the issuing carrier or agent. The title should be descriptive of the type of tariff, for example, Mileage Guide No. 1.

(5) *Description of rates, fares, or other contents of tariff.* In the central portion of the title page, below the title of the tariff, there shall be shown a statement indicating the kinds or types of rates or fares contained in the tariff or, if the tariff is a governing tariff such as a rules tariff, classification, or mileage guide, a brief description of the tariff's contents shall be shown. Such statement in a fare or rate tariff shall specify:

(i) Whether the tariff contains local fares or rates, joint fares or rates, or local and joint fares or rates.

(ii) If a fare tariff, that the tariff applies on passengers.

(iii) If a rate tariff, the type(s) of rates contained therein such as class, specific commodity, or general commodity rates, or any combination thereof.

(iv) If a fare tariff, the type(s) of fares contained therein, such as normal first class, coach, excursion, or other types of fares, or any combination thereof.

(6) *Description of territory.* The title page shall contain a brief but reasonably comprehensive description of the territory within which the rates or fares in the tariff apply. The territory shall be described by the names of cities, states, countries, or other definite geographical designations.

(7) *Reference to governing tariffs.* If a tariff is governed by other tariffs as authorized in this part, such as rules tariffs, mileage guides, and classifications, the title page shall show reference to such governing tariffs (by title, C.A.B. number, and issuing carrier or agent thereof in substantially the following form:

This tariff is governed, except as otherwise provided herein, by ———— (show tariff title), C.A.B. No. ——, issued by ———— (show name of issuing carrier or agent), by ———— (show tariff title), C.A.B. No. ——, issued by ———— (show name of issuing carrier or agent), and by supplements to and successive issues of said publications.

If preferred, reference to governing tariffs may be omitted from the title page and published in the first rule of the tariff, provided that the title page refers to such rule in the following manner:

For reference to governing tariffs, see rule No. —— as amended.

(8) *Reference to Special Tariff Permissions, orders, and regulations.* Where an entire tariff is issued pursuant to a Special Tariff Permission order, or regulation which requires the tariff to bear a notation referring to such Special Tariff Permission order or regulation, such notation shall be shown in the manner required thereby. If only certain tariff provisions, and not the entire tariff, are issued pursuant to permission, order, or regulation, reference to the permission, order, or regulation shall be shown in connection with such tariff provisions and not on the title page.

(9) *Expiration date.* If the entire tariff is to expire with a given date, such expiration date shall be shown in distinctive type on the title page in the following manner:

This tariff expires with ———— (show date in full) unless sooner canceled, changed, or extended.

If, however, only a portion of the tariff is to expire with a given date, the expiration date shall not be shown on the title page but shall be shown in connection with the particular item, rule, or other provision which is to expire.

(10) *Issued date.* The date on which the tariff is issued shall be shown in the lower left-hand portion of the title page in the following manner:

Issued: ————————, 19—.

(Show month, date, and year in full, using no abbreviations.)

Tariffs must be received by the Board on or before the designated issued date. (See § 221.160(d) and § 221.171 of this part.)

(11) *Effective date.* The date on which the fares, rates, charges, rules and other provisions in the tariff will become effective shall be shown in the lower right-hand portion of the title page (directly opposite the issued date) in the following manner:

Effective: ————————, 19—.

(Show month, date, and year in full, using no abbreviations.)

See § 221.160 for required notice.

(12) *Issuing officer, agent or designee.* The name, title and address of the following person shall be shown centered at the bottom of the title page:

(i) The issuing officer (if tariff is issued by a carrier),

(ii) The issuing agent (if tariff is issued by an individual agent),

(iii) The official or employee of a corporate agent designated by such agent to issue and file tariff publications in the corporate agent's name (if tariff is issued by a corporate agent).

With respect to loose-leaf tariffs, the title page shall be revised immediately, upon lawful notice, to reflect the current name, title and address of the above person whenever there is a change in such information. The title of an issuing officer of a carrier or the official or employee designated by a corporate agent to issue and file tariff publications shall not include the terms "Agent" or "Alternate Agent". (See §§ 221.10 and 221.11 stating who may issue tariffs.)

(b) *Specimen title page.* See § 221.248 containing a specimen title page which is shown only for the purpose of illustrating the arrangement of the contents of a title page.

(Secs. 204, 403, 1002; 72 Stat. 743, 758, 788 (49 U.S.C. 1324, 1373, 1482, as amended))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1104, 44 FR 9577, Feb. 13, 1979]

§ 221.32 Correction number check sheet (loose-leaf tariff).

Original Page 1 (page following the title page) of each loose-leaf tariff shall contain a check sheet of correction numbers (see § 221.111(c)). Original Page 1 shall contain no other contents of the tariff unless the tariff contains less than 30 pages. Such check sheet shall consist of the following explanatory provision followed by columns of consecutive correction numbers arranged in numerical order, commencing with No. 1, which shall be shown in the following manner:

CORRECTION NUMBER CHECK SHEET

Each time revised or additional original pages are received, check marks should be made on this check sheet opposite the correction numbers corresponding to those appearing in the lower right-hand corner of the revised or additional original pages. If pages are received not bearing consecutive correction numbers, the issuing carrier or agent should be requested to furnish the page bearing the correction number for which a page has not been received.

CORRECTION NUMBERS

1	6	11	16	21	26	31	36
2	7	12	17	22	27	32	37
3	8	13	18	23	28	33	38
4	9	14	19	24	29	34	39
5	10	15	20	25	30	35	40

When all correction numbers on a check sheet have been used and additional corrections are to be issued, the check sheet should be revised to continue the series of correction numbers. The correction numbers on a revised check sheet shall commence with the correction number following the last number on the preceding check sheet.

§ 221.33 Table of contents.

The table of contents shall contain a full and complete statement of the exact locations where information in the tariff will be found. Such statement shall show all subjects in alphabetical order and shall show the page number and the number of the item, rule, or unit where each subject will be found. The general headings of the various parts of the tariff, the subjects of individual rules and regulations, and terms descriptive of the application of the sections or tables of fares, rates or charges shall be included in the subjects of the tables of contents. If preferred, a separate index of the rules and regulations may be published immediately following the table of contents, provided the latter makes reference to such index. If a tariff or supplement contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.

§ 221.34 List of participating carriers.

(a) *One list of carriers arranged alphabetically.* Except as provided in paragraph (e) of this section and in § 221.151, the names of all carriers which participate in a tariff shall be shown in alphabetical order in one list with the power of attorney or concurrence number of each carrier shown opposite its name. If a participating carrier is an individual or partnership doing business under a trade name, the trade name should be shown in its alphabetical sequence in the list of participating carriers followed by the name of the individual or partners in the following manner:

Doe Airlines (John Doe and Earl Doe, doing business as).

(b) *Agent's tariff.* Except as provided in paragraph (e) of this section and § 221.151, the list of participating carriers in an agent's tariff shall be published in the following manner:

LIST OF PARTICIPATING CARRIERS

This tariff is issued and filed with the Civil Aeronautics Board by ———— (show name and title of agent) for and on behalf of the following participating carriers under authority of their powers of attorney filed with the Civil Aeronautics Board:

Participating carrier	Power of attorney No.
(List participating carriers alphabetically and show opposite each carrier the number of its power of attorney given to the issuing agent)	

(c) *Carrier's tariff.* Except as provided in paragraph (e) of this section, the list of participating carriers in a tariff issued by a carrier shall be published in the following manner:

LIST OF PARTICIPATING CARRIERS

This tariff is issued and filed with the Civil Aeronautics Board by ——— (show name of issuing carrier) for and on behalf of itself and the following participating carriers under authority of their concurrences filed with the Civil Aeronautics Board:

Participating carrier	Concurrence No.
(List participating carriers alphabetically and show opposite each carrier the number of its concurrence given to the issuing carrier)........................	

(d) *Restrictions upon participation.* Restrictions upon the extent to which a carrier participates in the tariff shall not be shown in the list of participating carriers (as amended) but shall be shown elsewhere in the tariff as authorized by this part.

(e) *When powers of attorney or concurrence numbers may be omitted.* Powers of attorney numbers and concurrence numbers need not be shown in the tariff as required above by the publishing carrier or agent, provided:

(1) That with the filing of each tariff, a separate alphabetical list of all participating carriers be transmitted to the Board, which list shall include opposite the name of each carrier the current power of attorney or concurrence number under which the carrier participates in the tariff; and

(2) That when revisions of the tariff propose the addition or elimination of any carrier in the tariff, such tariff revision shall be accompanied by a revised alphabetical list showing all participating carriers and specifically indicating additions and cancellations, and such list shall also be filed when there is any change in a power of attorney or concurrence such as a cancellation, revocation, reissue.

§ 221.35 Explanations of abbreviations, reference marks, and symbols.

(a) *Explanation required.* Abbreviations, reference marks, and symbols which are used in the tariff shall be explained either on the same page on which they are used or their explanations shall be shown preceding the indexes of commodities and points. Each page on which abbreviations, reference marks or symbols are used but not explained thereon shall refer to the page containing their explanations substantially in the following manner (at the bottom of the page):

For explanations of abbreviations, reference marks, and symbols used but not explained hereon, see page —— (as amended).

(b) *Uniform symbols.* The following symbols shall be used only in the manner specified in § 221.114 and the following explanations of such symbols shall be used in all tariff publications.

(R) or ▼—denotes reductions.
(A) or ◆—denotes increases.
(C) or ▲—denotes changes which result in neither increases nor reductions.
(K) or ÷—denotes no change.
(N) or ■—addition.

Either the set of lettered symbols above or the set of solid black symbols to their right, but not both, shall be used.

(c) *Restrictions on use of certain symbols.* The symbols ¢ and $ shall be used only to indicate currencies and shall clearly define the type of currency for which used. The symbol % shall be used only to mean percent.

(d) *Prohibited abbreviations, symbols, or reference marks.* The following shall be shown in full and shall not be designated by symbols, abbreviations, or reference marks:

(1) Name of an agent.

(2) Name of a carrier (except in the rules or regulations and in the routings and indexes of points).

(3) Name of a city or town (except in routings).

(4) Name of a month when used in issued, effective or expiration dates.

§ 221.36 Index of commodities (property tariff).

(a) *Complete index.* Except as provided in paragraph (d) of this section, each property tariff shall contain a complete, alphabetical index of all commodities or articles for which ratings or specific commodity rates are provided in the tariff. Opposite each commodity or article in the index, reference shall be shown to the number of each item (or similar unit, such as group) in which such commodity or article is shown.

(b) *Alphabetical arrangement.* Commodities shall be arranged in the index in alphabetical order according to their nouns, for example, "wrapping paper" shall be shown and indexed as "paper, wrapping". If the noun is not sufficiently explicit, the commodity should also be indexed under the adjective as well as under the noun. All of the entries for the same noun should be grouped together and indexed alphabetically first according to the noun and then according to the adjective appearing after the noun, for example, various kinds of paper would be indexed under "paper" in the following manner:

Commodity	Item No.
Paper, gummed	120
Paper, printing	210
Paper, waxed	120
Paper, wrapping	240

(c) *Indexing commodity lists.* When a tariff contains specific commodity rates applicable to a list of specific commodities or articles grouped under a generic commodity description heading as authorized by § 221.75, the index of commodities shall show:

(1) Such generic heading or description (in distinctive type) in its proper alphabetical sequence in the index and opposite thereto reference to each item where such generic heading or description is shown including the item which contains the list of commodities under such generic heading;

(2) Each individual commodity or article (named in such list under the generic heading) in its proper alphabetical sequence in the index and opposite thereto reference to each item where such generic heading or description is shown including the item containing the list of commodities under such generic heading.

(d) *When index may be omitted*—(1) *Alphabetical arrangement.* The index of commodities may be omitted from a tariff or supplement if all specific commodity rates therein are arranged in alphabetical order (by commodities) in only one alphabetical sequence and all classification or exceptions ratings are arranged in alphabetical order (by commodities) in only one alphabetical sequence (the showing of generic headings in alphabetical sequence will not meet this requirement since individual commodities thereunder would not appear in the required alphabetical sequence). If the index of commodities is omitted under authority of this paragraph, an explanation of the alphabetical arrangement shall be published in the place where the index would have been published, for example:

INDEX OF COMMODITIES

(Commodities are arranged alphabetically
throughout pages —— through ——)

(2) *Less than five pages of commodity descriptions.* If the commodity descriptions on which rates or ratings are applicable are shown on not more than four pages of a tariff or supplement, the index of commodities may be omitted from such tariff or such supplement.

§ 221.37 Index of points.

(a) *Alphabetical index required.* Each tariff shall contain an alphabetical index of all points of origin named in the tariff and a separate alphabetical index of all points of destination named in the tariff, except that the points of origin and destination may be included in one alphabetical index when all or substantially all of the rates or fares in the tariff apply in both directions between their respective points. The state, territory, possession, or District of Columbia in which each United States point is located shall be shown in connection with each such point. If the tariff applies to or from foreign countries, the respective country shall also be shown in connection with each and every point in the index except that:

(1) Only the name of the state, possession, territory or the District of Columbia is required to be shown in connection with each point in the United States.

(2) Only the name of the province is required to be shown in connection with each point in Canada.

(3) Only the name of the possession or territory is required to be shown in connection with each foreign point which is situated within a possession or territory of a mother country, for example, Antigua, British West Indies; however, if such point is coextensive with the territory or possession in which it lies, such as Hong Kong, it shall be identified by nationality in the following manner: Hong Kong (British).

Opposite each point, reference shall be made to the number of each item (or similar unit) in which the respective point appears. If the point is not published in a numbered item (or similar unit), reference shall be made to the page on which the point appears. If the tariff contains rates or fares for account of more than one carrier, each point in the index shall show the carrier or carriers serving the respective point.

(b) *When index may be omitted.* The index of points may be omitted provided that all points of origin and destination are arranged in alphabetical order throughout the tariff or, if the fares or rates are published in two or more distinct sections or tables, throughout each section or table. Such alphabetical arrangement shall be explained as required by paragraph (c) of this section. In addition, when fares or rates are so arranged in sections or tables, reference to each section or table shall be shown in the table of contents. Tables of rate scale numbers conforming to § 221.80(b)(1) and alphabetical lists of points conforming to § 221.80(c)(1) shall constitute acceptable alphabetical arrangements of points for the purpose of determining whether an index of points may be omitted under the terms of this paragraph. The following arrangements of points shall be considered to be in alphabetical order:

(1) From origin points arranged in alphabetical sequence, to destination points arranged in alphabetical sequence under their respective origin points;

(2) To destination points arranged in alphabetical sequence, from origin points arranged in alphabetical sequence under their respective destination points;

(3) Between one group of points arranged alphabetically as headline points, and another group of different points arranged alphabetically as sideline points under their respective headline points, (but with no fares or rates between points in the same group) as, for example, between United States headline points, on the one hand, and Canadian sidelines points, on the other hand;

(4) Between points shown in a descending alphabetical arrangement in which fares or rates are provided between substantially all points in the fare or rate table as, for example, between headline point A and sideline points B through Z, between headline point B and sideline points C through Z, between headline point C and sideline points D through Z, and continuously descending to the final listing, between headline point Y and sideline point Z. In the above arrangements, points shall be either (i) in alphabetical sequence by points or (ii) in alphabetical sequence first by States (or Canadian provinces) and thence by points grouped under their respective States (or provinces).

(c) *Explanation required when index omitted.* When the index of points is omitted as provided in paragraph (b) of this section, a comprehensive explanation of the alphabetical arrangement of points must be shown in the place where the index of points would have been published. The following are some examples of such explanations which may be modified to explain the particular alphabetical arrangement employed in the tariff:

INDEX OF POINTS OF ORIGIN AND DESTINATION

Points of origin are arranged alphabetically as headline points throughout the tariff. Points of destination are arranged alphabetically as sideline points under each origin point. (See § 221.37(b)(1).)

or

Points in the United States are arranged alphabetically as headline points throughout the tariff. Points in Canada are arranged alphabetically as sideline points under each headline point. (See § 221.37(b)(3).)

or

Points of origin and destination are arranged alphabetically throughout the tariff (or each section or table of fares (or rates)). (See § 221.37(b)(4).)

or

Points of origin and destination are arranged alphabetically throughout the tariff (or each section or table of fares (or rates)) first by States or provinces, thence by points of origin and destination grouped under their respective States or provinces. (See § 221.37(b)(4).)

(d) *When reference to items (or similar units) or pages may be omitted from index.* If an index is published in a tariff containing rates or fares for account of two or more carriers, the index of points shall show the carrier or carriers serving each point but may omit reference to each item (or similar unit) or page where each point appears, provided that the tariff conforms with § 221.37(b) and that the explanation of the alphabetical arrangement of points is shown in the heading of the index on each page thereof in the manner set forth in paragraph (c) of this section.

§ 221.38 Rules and regulations.

(a) *Contents.* Except as otherwise provided in this part, the rules and regulations of each tariff shall contain:

(1) Such explanatory statements regarding the fares, rates, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(2) All of the terms, conditions, or other provisions which affect the rates, fares, or charges for air transportation named in the tariff.

(3) All the rates or charges for, and the provision governing, terminal services, and all other services which the carrier undertakes or holds out to perform on, for, or in connection with air transportation, except that, in the case of pick-up and delivery services, the tariff need only specify the extent to which the air transportation rates named in the tariff include such services; and, where pick-up and delivery services are provided only at an additional charge, such additional charges shall not be included in the tariffs.

(4) All other provisions and charges which in any way increase or decrease the amount to be paid on any shipment or by any passenger, or which in any way increase or decrease the value of the services rendered to the shipper or passenger.

(5) [Reserved]

(6) For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger service are performed in a single aircraft, the seating configuration for each type or class shall be stated. The description of the seating configuration of each type of service on each aircraft shall include the following:

(i) The number of seats abreast.

(ii) The maximum and minimum distances in inches from the forward edge of a seat to the forward edge of the seat directly in front thereof (pitch).

(iii) The number of lounge seats.

(iv) The number of lounge seats or other seats withheld from sale and available for passengers' temporary use during flight. If some or all lounge seats are available for sale under certain conditions, such fact and conditions shall be explicitly stated.

(7) *Denied boarding compensation.* For carriers subject to Part 250, denied boarding compensation as specified in Part 250.

(8) For certificated air carriers, the rules and regulations relating to the transportation of persons who may need assistance to evacuate the aircraft during an emergency. All such provisions shall be in conformity with Part 121 of the Federal Aviation Regulations (14 CFR Part 121), as amended or revised from time to time: *Provided,* That no provision of the Board's regulations issued under this part or elsewhere shall be construed to permit the filing of any tariff rules limiting or conditioning a carrier's obligation to provide transportation and services in connection therewith upon reasonable request therefor to a person who may require assistance of another person in expeditiously moving to an emergency exit of the aircraft in the event of an evacuation, except as provided for in said Part 121.

(b) *Rule numbers.* Each rule or regulation shall be given a separate designation. The same designation shall not be assigned to more than one rule in the tariff. The rules and regulations shall be shown in the tariff in numerical or alphabetical order. A gap between rule numbers may be allowed for the addition of future rules, for example, the rules in an original tariff may be numbered Rules Nos. 5, 10, 15, etc. When a rule contains more than one paragraph, the paragraphs and subparagraphs shall be consecutively lettered or numbered.

(c) *Single subject and caption.* Each numbered rule shall be confined to a single subject and shall bear a caption descriptive of the subject matter therein. Such caption shall be shown in distinctive type.

(d) *Rules of limited application.* A rule affecting only a particular rate, fare, or other provisions in the tariff shall be specifically referred to in connection with such rate, fare, or other provision, and such rule shall indicate that it is applicable only in connection with such rate, fare or other provision. Such rule shall not be published in a separate governing rules tariff.

(e) *Clear, explicit, and definite statements required.* All rules and regulations shall be stated in clear, explicit, and definite terms. Ambiguous or indefinite terms or language shall not be used. Where the rules and regulations contain any rates or charges or other amounts affecting the charges to be paid on any shipment or by any passenger, such rates, charges, or amounts shall be stated in United States dollars or cents to be applied to a definite unit of weight, measurement, time, currency, or other definite measure. When transportation fares or rates are published in foreign currency under authority of § 221.51(b), any charges or other amounts set forth in rules or regulations may be stated in such foreign currency in addition to the required statement in United States currency, provided that such charges or other amounts in foreign currency are substantially equivalent in value to the respective charges or other amounts stated in United States currency. Where the carrier holds out to perform terminal or other services in connection with air transportation, the rule covering such services shall describe the exact service, state the rates or charges which the carrier will make for such service, and set forth in definite terms the conditions under which the carrier will perform such service. Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed. Rules and regulations shall not contain indefinite statements to the ite statements to the effect that traffic of any nature will be "taken only by special arrangements", or that services will be performed or penalties imposed "at carrier's option", or that the carrier "reserves the right" to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(f) *Conflicting or duplicating rules prohibited.* The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is hereby prohibited.

(g) *Separate rules tariff.* If desired, the rules and regulations required by this section may be published in separate governing tariffs to the extent authorized and in the manner required by §§ 221.100 through 221.104, and 221.107.

(h) *Personal liability rules.* No provision of the Board's regulations issued under this part or elsewhere shall be construed to require on and after March 2, 1954, the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Board shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(i) *Carriers' extension of credit—passenger tariffs, property tariffs.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to the air transportation of persons or property.

(j) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (h) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(k) *Individual carrier provisions governing joint rates or fares.* Provisions governing joint rates or fares may be published for account of an individual carrier participating in such joint rates or fares provided that the tariff clearly indicates how such individual carrier's provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(l) *Passenger tariffs; property which cannot lawfully be carried in the aircraft cabin.* Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(Secs. 102, 416, 72 Stat. 240, 771, secs. 3, 4, 80 Stat. 383, 81 Stat. 54; 49 U.S.C. 1302, 1386, 5 U.S.C. 552, 553, secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732 (49 U.S.C. 1302, 1324, 1373, and 1386))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-504, 32 FR 11938, Aug. 18, 1967; ER-795, 38 FR 9222, Apr. 12, 1973; ER-871, 39 FR 31882, Sept. 3, 1974; ER-1020, 42 FR 43830, Aug. 31, 1977; ER-1062, 43 FR 34442, Aug. 4, 1978; ER-1125, 44 FR 33059, June 8, 1979; ER-1229, 46 FR 32551, June 24, 1981; ER-1369, 48 FR 54589, Dec. 6, 1983]

§ 221.39 Classification ratings or exceptions to governing classification ratings.

(a) *Classification ratings.* Each tariff containing class rates shall list all articles or commodities accepted for transportation together with their applicable ratings in the following manner:

(1) The articles or commodities on which the ratings apply shall be described and listed in an orderly manner, and opposite each article or commodity there shall be shown the class rating applicable to the respective article or commodity.

(2) The articles or commodities shall be listed alphabetically in one sequence throughout the section of class ratings to the greatest extent that is practicable. A group of articles or commodities may be published under a generic commodity heading: *Provided,* That the generic heading appears in its proper alphabetical sequence in the section of class ratings and that the articles or commodities in such group are listed alphabetically and indented under such generic heading.

(3) The class ratings assigned to the articles or commodities shall be numbered classes corresponding identically to the numbered classes for which class rates are provided. (See § 221.73(c) describing rates on numbered classes.)

(4) Each commodity description and its applicable class rating shall be published in a separate, numbered item. The items shall be shown in numerical order in sequence with other item numbers as may be used in the tariff.

(5) An item shall not state that the rating on any article or commodity will be that applying on another article or commodity, for example, an item shall not provide that "paper wrappers" will take "wrapping paper" ratings. (If "paper wrappers" are to take the same rating as "wrapping paper", such rating shall be shown in the item listing "paper wrappers".)

(6) The publication of class ratings which duplicate or conflict with other class ratings is hereby prohibited. Also, class ratings shall not take precedence over other class ratings (except as provided in paragraph (c) of this section).

(7) The following format is suggested for the publication of classification ratings in the tariff containing the class rates, but may be adjusted to conform with the format or context of a particular tariff:

CLASSIFICATION RATINGS

[Applicable only in connection with class rates Section——]

Item No.	Article or commodity	Class

(b) *Classification ratings in governing tariff.* The classification of articles required by paragraph (a) of this section may be omitted from the rate tariff provided that it is published in its entirety in a separate classification tariff in accordance with §§ 221.100, 221.101, and 221.105.

(c) *Exceptions to governing classification ratings.* When the classification ratings are published in a separate classification tariff as provided under paragraph (b) of this section and it is found necessary to publish ratings which are exceptions to such classification ratings without canceling the classification ratings, this part of the class rates tariff shall contain the ratings which are exceptions to the ratings in the governing classification tariff. Such exception ratings shall be published in compliance with the following requirements:

(1) The exceptions ratings shall comply with paragraph (a)(1) through (7) of this section, except that the heading reading "Classification Ratings" in paragraph (a)(7) of this section shall be changed to read substantially "Exceptions to Ratings in Governing Classification."

(2) Exceptions ratings shall be exceptions, in fact, to ratings in the governing classification and shall not be published to cover commodities for which no ratings are provided in the governing classification.

(3) Exceptions ratings restricted to apply from and to or between a small number of points shall not be published to avoid the publication of specific commodity rates from and to or between such points.

(4) The descriptions of the commodities on which the exceptions ratings apply shall conform as closely as possible to the commodity descriptions in the governing classification tariff.

§ 221.40 Statement of fares or rates for air transportation.

The statement of fares for the air transportation of persons shall be prepared in accordance with the provisions of Subpart E. The statement of rates for the air transportation of property shall be prepared in accordance with the provisons of Subparts E and F.

§ 221.41 Routing.

(a) *Required routing.* The route or routes over which each fare or rate applies shall be stated in the tariff in such manner that the following information can be definitely ascertained from the tariff:

(1) The carrier or carriers performing the transportation,

(2) The point or points of interchange between carriers if the route is a joint route (via two or more carriers),

(3) The intermediate points served on the carrier's or carriers' routes applicable between the origin and destination of the rate or fare and the order in which such intermediate points are served. (This information, however, is not required in those property tariffs which are not subject to rules or other provisions for stopping in transit or to any other provisions which require determining what intermediate points are served via the tariff routing between the origin point and

destination point of a rate; nor is it required in passenger tariffs of carriers whose operations are other than over defined routes stated in certificates or permits issued by the Board; nor in charter tariffs.) On an experimental basis, for the purposes of complying with this paragraph, tariffs may include for each carrier a separate map of the carrier's routes, showing intermediate points in the order served.

(b) *Individually stated routings*—(1) *Method of publication.* Except as otherwise authorized in paragraphs (c) and (d) of this section, the routing required by paragraph (a) of this section shall be shown directly in connection with each fare, rate or charge for transportation, or in a routing portion of the tariff (following the rate or fare portion of the tariff), or in a governing routing tariff. When shown in the routing portion of the tariff or in a governing routing tariff, the fare or rate from each point of origin to each point of destination shall bear a routing number and the corresponding routing numbers with their respective explanations of the applicable routings shall be arranged in numerical order in the routing portion of the tariff or in the governing routing tariff.

(2) *Class of passenger service and aircraft type specified in routing.* Where a passenger fare applies via one class of service (or type of aircraft) over a portion of the routing applicable from origin to destination and via a different class or classes of service (or a different type or types of aircraft) over the remainder of the routing, provisions as to the classes of services (or types of aircraft) provided over the respective segments of the routing may be included in the applicable routing published in accordance with paragraph (b)(1) of this section. When routings containing such provisions are published in a separate routing section of the tariff or in a governing routing tariff, the headings of the pages containing fares subject to such routings shall indicate that provisions as to class of service or type of aircraft are set forth in the routing.

(c) *Diagrammatic routings.* For property rates between United States points, on the one hand, and points in foreign countries or United States Territories or Possessions, on the other hand, the routing information required by paragraphs (a) (1) and (2) of this section may be shown in the form of routing diagrams. A routing diagram consists of a series of connected columns or rectangular figures, each naming or designating a group of points, with carrier routing designated between each pair of consecutive, connected groups, and an explanation of how to use the diagram in determining applicable routings. An illustration of an acceptable form of routing diagram is set forth in Illustration No. 1 at the end of this paragraph. Publication of routing diagrams shall conform to the following requirements:

(1) Each routing diagram shall bear a routing number. Only connected groups shall be included in one diagram.

(2) Routing diagrams shall be published in numerical order, by routing number, in the routing portion of the tariff following the rate portion or in a governing routing tariff.

(3) The pages containing the rates shall refer, by routing number, to the applicable routing diagrams. Where all rates in a tariff, table or section are subject to one routing diagram, such reference may be shown in the heading of each rate page thereof. Otherwise, reference to the applicable routing diagrams shall be shown directly in connection with the respective rates from each origin to each destination.

(4) An explanation of the application and use of each routing diagram shall be published in connection therewith in sufficient detail to enable the applicable routings to be definitely determined.

(5) Groups of points of origin, destination and interchange shall be designated in the diagram by definite geographic terms.

(6) The carriers performing the transportation between each pair of consecutive, connected groups of points in the diagram shall be specifically designated in the routing diagram except that where space limitations make this impractical, such carrier routing may be published in the following manner:

(i) Except as otherwise authorized in paragraph (a)(6)(ii) of this section, the routing between two consecutive, connected groups in the diagram may be shown by referring to a routing chart conforming to the following requirements. Routing charts shall be in tabular form showing the specific points in one group as headline points and the specific points in the other group as sideline points. Headline points shall be arranged alphabetically and the sideline points shall be arranged alphabetically under the respective headline points. Carrier routing between each headline point and each sideline point shall be shown in the intersecting space in the tabular chart. An illustration of such routing chart (using abbreviations to designate carriers) is set forth in Illustration No. 2 at the end of this paragraph.

(ii) Carrier routing between two consecutive, connected groups consisting exclusively of foreign points may be shown either by a routing chart authorized under paragraph (a)(6)(i) of this section or in the following manner. The routing diagram may provide that carrier routing between such groups of foreign points shall be via any single-carrier service and shall refer to the tariff's alphabetical index or list of points of origin and destination to determine the carriers serving the respective points in each group. The latter method of publication may be used only where the tariff contains an alphabetical index or list of points of origin and destination showing the carriers serving the respective points, and only where each carrier indicated by such index or list as serving a pair of points (one in each such group) does in fact maintain service between such pair of points.

(d) [Reserved]

(e) *Emergency routing rule.* If desired, the following routing rule may be published in property rate tariffs conforming with paragraph (b) or (c) of this section:

> *Routing instructions.* The rates named in this tariff will apply only over the routes and via interchange points authorized herein except that when, in the case of pronounced traffic congestion (not an embargo) or other similar emergency, or through carrier's error, carriers forward shipments by other transfer points of the same carriers or over other carriers parties to the tariff, the rates specified in this tariff (but not higher than the rate applicable over the actual route of movement) will be applied.

(f) *Forwarders.* The preceding paragraphs of this section do not apply to tariffs of Air Freight Forwarders or International Air Freight Forwarders. Where the rates and charges of two or more forwarders are published in one tariff issued by an agent, the tariff shall clearly indicate in connection with each rate or charge the respective individual forwarder for whom it is published.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-867, 39 FR 35570, Oct. 2, 1974]

Subpart E—Requirements Applicable to All Statements of Fares or Rates

§ 221.50 Clear and explicit statement; systematic arrangement.

All fares, rates, and charges shall be clearly and explicity stated and shall be arranged in a simple and systematic manner. Complicated plans and ambiguous or indefinite terms shall not be used. So far as practicable, the fares, rates, and charges shall be subdivided into items or similar units, and an identifying number shall be assigned to each item or unit to facilitate reference thereto.

§ 221.51 Currency.

(a) *Statement in United States currency required.* All fares, rates, and charges shall be stated in cents or dollars of the United States except as provided in paragraph (b) of this section.

(b) *Statements in both United States and foreign currencies permitted.* Rates, fares, and charges applying between points in the United States, on the one hand, and points in foreign countries, on the other hand, or applying between points in foreign countries, may also be stated in the currencies of foreign countries in addition to being stated in United States currency as required by paragraph (a) of this section: *Provided,* That:

(1) The fares, rates, and charges stated in currencies of countries other than the United States are substan-

tially equivalent in value to the respective fares, rates, and charges stated in cents or dollars of the United States.

(2) Each page containing fares, rates, and charges shall clearly indicate the respective currencies in which the fares, rates and charges thereon are stated, and

(3) The fares, rates, and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. Such separate publication shall be done in a systematic manner and the fares, rates, and charges in the respective currencies shall be published either in separate columns on the same page, or on separate pages, or in separate sections or tables of the tariff.

§ 221.52 Territorial application.

(a) *Specific points of origin and destination.* Except as otherwise provided in this part, the specific points of origin and destination from and to which the fares or rates apply shall be specifically named directly in connection with the respective fares or rates. If the tariff names points only in the United States and/or Canada, the respective State, possession, territory or District of Columbia shall be shown in connection with each United States point and the respective province shall be shown in connection with each Canadian point; however, if such tariff applies to scheduled transport service and contains an index of points conforming to § 221.37 (a) or (d), the State, possession, territory, District of Columbia, or Canadian province may be omitted (at publisher's election) from the fare or rate tables except in connection with different points of the same name. If the tariff contains fares or rates applying to or from points in foreign countries (other than or in addition to Canada), the following shall be shown in connection with each point named:

(1) The respective State, possession, territory or District of Columbia in which each United States point is situated, and the respective province in which each Canadian point is situated;

(2) The respective country in which each point is situated except that the country may be omitted (at publisher's election) in connection with United States and Canadian points;

(3) Only the respective possession is required to be shown in connection with each foreign point which is situated within a possession of a mother country, for example, Antigua, British West Indies; however, if such point is coextensive with the possession in which it lies, such as Hong Kong, it shall be identified by nationality in the following manner: Hong Kong (British).

(b) *Points taking same fares or rates.* The fares or rates applying to (or from) a particular point named in the table of fares or rates may be made to apply to (or from) other points in the following manner. Show such other points in their proper alphabetical order in the rate or fare table and show in connection with each such point a statement that it takes the same fares or rates as apply to (or from) the particular point for which fares or rates are specifically published in the table. If the tariff has an index or list of points, the latter statement may be published in connection with the respective points in the index or list instead of in the rate or fare table. All such statements shall be published uniformly either (1) in the index (or list) or (2) in the table, but not in both.

(c) *Territorial application of time or distance rates or fares.* Where fares, rates, and charges are published to apply per mile or per hour or other units of time or distance as provided in §§ 221.55 and 221.56, the exact territory or territories within which or between which such fares or rates apply shall be stated either directly in connection with the fares, or rates, or in a rule in the same tariff and reference to such rule shall be shown in connection with such rates, fares, or charges.

(d) *Directional application.* A tariff shall specifically indicate directly in connection with the rates or fares therein whether they apply "from" and "to" or "between" the points named. Where the rates or fares apply in one direction, the terms "From" and "To" shall be shown in connection with the point of origin and point of destination, respectively, and, where the rates and fares apply in both directions between the points, the terms "Between" and "And" shall be shown in connection with the respective points.

§ 221.53 Airport-to-airport application, accessorial services.

(a) Tariff publications containing rates or fares for air transportation shall specify whether or not they include additional services in one or more of the following ways:

(1) The tariff shall indicate that rates or fares include pick-up, delivery, or other services, explicitly defining the services to be furnished, and defining areas or points within or between which the services will be performed; or

(2) The tariffs shall indicate that the rates or fares apply from airport-to-airport and that the carrier does not perform additional services; or

(3) The tariff shall indicate that the rates or fares apply only from airport-to-airport but that additional services are furnished subject to additional charges, and, except for pick-up and delivery services, the tariff shall set forth charges for all other services and other provisions applicable thereto, as required by § 221.38, clearly and explicitly specifying the extent to which such services will be furnished.

(b) The above requirements shall not be construed as precluding the publication of rates or fares for air transportation which include pick-up or delivery service at certain specified points or areas within the pick-up and delivery zone of the airport city of origin or destination but subject to a further provision that pick-up or delivery service will be provided at other specified areas or points within the same pick-up and delivery zone only upon payment of an additional charge.

(c) The airport-to-airport application of rates or fares for air transportation and the statements as to the extent to which such rates or fares include pick-up, delivery or other accessorial services shall be published in the rate or fare tariff and not in a governing tariff. However, the definitions of such services, the definitions of areas or points within or between which such services will be performed, and the rates or charges for such services (when not included in the air transportation rates or fares) may be published in a governing rules tariff conforming to § 221.102, except that additional charges for pick-up and delivery services shall not be included in the tariffs.

[ER-1229, 46 FR 32551, June 24, 1981]

§ 221.54 Distance fares, rates, or charges.

(a) Tariffs containing fares or rates which are stated to apply per mile or other unit of distance shall provide one or more of the following methods for determining distance:

(1) Show the applicable distance from each point of origin to each point of destination from and to which such fares or rates apply,

(2) Make reference by C.A.B. number to a separate mileage or distance guide for such distances (see § 221.106), or

(3) Make reference to:

(i) The mileage publication of the International Air Transport Association;

(ii) The mileage publication of the United States Department of Commerce, Coast and Geodetic Survey, Special Publication No. 238, Air-Line Distances Between Cities in the United States;

(iii) Book of Official C.A.B. Airline Route Maps and Airport to Airport Mileages published by the Air Transport Association of America.

Tariffs making reference to two or more of the mileage publications referred to above shall plainly state how each is to be applied and in such manner that no conflict results from the stated application.

(b) The unit of distance on which the rates or fares apply shall be the same unit in which the applicable distances are published, for example, if the applicable distances are stated in miles, the rates or fares shall be stated to apply "per mile".

(c) Distance fares or rates may be published when specific point-to-point fares or rates are also published for the same transportation provided that the tariff containing the distance fares or rates (not a governing tariff shall contain a rule making the distance fares or rates inapplicable when specific point-to-point rates or fares are provided for the same transportation, except that distance specific commodity rate shall not be made inapplicable when specific, point-to-point class rates or general commodity rates are provided.

§ 221.55 Time fares, rates, or charges.

Fares, rates, or charges for air transportation shall not be stated to apply per hour or any other unit of time.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-1125, 44 FR 33059, June 8, 1979]

§ 221.56 Rates may include transfer at interchange points.

A rate applying locally over the lines of one carrier or jointly over the lines of two or more carriers shall include transfer service at interchange points unless the tariff otherwise provides. In the case the transfer service is not included, the tariff containing such rates shall state that such transfer service is not included or is provided at a specified additional charge.

§ 221.57 Proportional fares or rates.

(a) *Definite application.* Proportional fares or rates shall be specifically designated as "proportional" fares or rates on each page where they appear. Subject to paragraph (b) of this section, proportional fares or rates shall be specifically restricted to apply:

(1) Only on traffic which:

(i) Originates at a point of origin beyond the point from which the proportional fare or rate applies, or

(ii) Is destined to a point of destination beyond the point to which the proportional fare or rate applies, or

(iii) Both originates at a beyond point specified in paragraph (a)(1)(i) of this section and is destined to a beyond point specified in paragraph (a)(1)(ii) of this section.

(2) Only when the passenger is transported on a through ticket or the shipment is transported on a through air waybill or other form of transportation contract or document covering the through transportation from and/or to such beyond points, or, with respect to foreign air transportation, when such through ticket or through air waybill, or other form of through transportation contract or document cannot be issued, the tariff shall provide that the proportional fare or rate may be used only upon presentation by the passenger or shipper of clear and convincing evidence that the passenger or shipment has been or will be transported from and/or to such beyond points.

(b) *Restrictions upon beyond points or connecting carriers.* If a proportional fare or rate is intended for use only on traffic originating at and/or destined to particular beyond points or is to apply only in connection with particular connecting carriers, such application shall be clearly and explicitly stated directly in connection with such proportional fare or rate.

§ 221.58 Arbitraries.

(a) A tariff may provide that rates or fares from (or to) particular points shall be determined by the addition of arbitraries to, or the deduction of arbitraries from, rates or fares therein which apply from (or to) a base point. An arbitrary is a specific amount in dollars or cents published specifically for application in the above manner. Provisions for the addition or deduction of such arbitraries shall be shown either directly in connection with the fare or rate applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such arbitraries shall be applied. In the case of arbitraries applicable to the transportation of property, the arbitraries shall be published in the same units of currency and rate as those in which the base rates are stated, and shall be stated to apply on the same minimum quantities (or quantity groups) as those on which the base rates apply.

(b) The tariff shall state definitely whether the arbitraries are to be added to, or deducted from, the fares or rates applying from (or to) the base points (for example, it may provide in effect that the arbitraries shall be added to the fares or rates applying from (or to) the base points except that those arbitraries bearing a particular reference mark, such as a minus sign (−), shall be deducted from such base fares or rates). In some circumstances, it may be necessary to publish a zero amount "0" in the table of arbitraries; in this event, the tariff shall state definitely that the fare or rate applying from (or to) the base point shall also apply from (or to) the point taking the zero amount in the arbitrary table without the addition or deduction of an arbitrary.

§ 221.59 Fares or rates stated in percentages of other fares or rates; other relationships prohibited.

(a) Fares or rates for air transportation of persons or property shall not be stated in the form of percentages, multiples, fractions, or other relationships to other fares or rates except to the extent authorized in paragraphs (b), (c), (d), and (e) of this section with respect to passenger fares and baggage charges and in Subpart F with respect to property rates.

(b) A basis of fares for refund purposes may be stated, by rule, in the form of percentages of other fares.

(c) Transportation rates for the weight of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares, provided reference is made to a conversion table complying with paragraph (e) of this section for the purpose of determining the amounts of such rates in dollars or cents represented by the published percentages of the fares.

(d) Children's fares, round-trip fares, or other types of fares may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): *Provided,* That:

(1) Fares stated as percentages of base fares shall apply from and to the same points, via the same routes, and for the same class of service and same type of aircraft to which the applicable base fares apply, and shall apply to all such base fares in a fares tariff or designated section or table of a fares tariff except that:

(i) If the base fares are published for account of two or more participating carriers, such percentage fares may be restricted to apply for account of only certain participating carriers. If such carriers participate in joint base fares, the extent to which such restricted percentage fares apply to the joint base fares shall be clearly indicated.

(ii) If the base fares are named between points in the continental United States and points outside thereof, such percentage fares may be restricted territorially to apply between, within, or from and to any of the following areas (but not portions of a single area):

Alaska.
Hawaii.
Continental United States.
United States of America.
One or more Territories or Possessions of the United States.
One or more foreign countries.
A definite geographic area larger than a country.

The term "continental United States," as used in this paragraph, means all of the 48 contiguous States and the District of Columbia.

(2) Fares shall not be stated as percentages of base fares for the purpose of establishing fares applying from and to points, or via routes, or on types of aircraft, or for classes of service different from the points, routes, types of aircraft, or classes of service to which the base fares are applicable.

(3) Fares stated as percentages of base fares shall refer to a conversion table complying with paragraph (e) of this section for the purpose of determining the amounts of such fares in dollars and cents represented by the published percentages of the base fares.

(e)(1) A conversion table shall be published in the fares section of the tariff containing the base fares or, if that tariff is governed by a rules tariff, the table may be published after the last rule therein. The conversion table shall contain in the first column, in numerical order ranging from the lowest to the highest amounts, the amounts of all the base fares on which the percentages are to be applied. Each of the other columns shall be captioned with a percentage corresponding to a percentage in which a fare is stated. In each of the percentage-captioned columns and directly opposite each base fare, the amount in dollars or cents represented by the stated percentage of the respective base fare shall be shown. Such columns shall be arranged in numerical order (according to percentage). A clear and definite explanation of how to use the conversion table shall be shown in connection therewith.

(2) Instead of showing in the first column all base fares from the lowest to the highest, the table may contain in the first column $0.05 and all multiples thereof to and including $1.00 and all multiples of $1.00 to and including $100.00 with a plainly stated rule for using, in combination, amounts ascertained in the percentage columns for the separate portions of the base fare. The rule shall provide, for example, that if the base fare is $7.65, the percentages for $7.00 and $0.65 are to be ascertained separately and combined.

§ 221.60 Conflicting or duplicating rates or fares prohibited.

The publication of rates or fares of a carrier which duplicate or conflict with the rates or fares of the same carrier published in the same or any other tariff for application over the same route or routes is hereby prohibited.

§ 221.61 Provisions for alternative use of or precedence of rates or fares prohibited.

Except as specifically authorized otherwise in this part, a tariff containing rates or fares shall not contain nor be made subject to any tariff provisions to the effect that rates or fares in such tariff take precedence over or apply alternatively with other rates or fares in the same or any other tariff, or that the rates or fares in any other tariff take precedence over or alternate with the rates or fares in such tariff.

§ 221.62 [Reserved]

§ 221.63 Applicable rate when no through local or joint fares or rates.

(a) *Lowest combination fare or rate applicable.* Where no applicable local or joint fare or rate is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares or rates provided over the route of movement produces the lowest charge shall be applicable, except that a tariff may state that a fare or rate cannot be used in any combination or in a combination on particular traffic or under specified conditions, provided another combination is available.

(b) *Date governing combination fares or rates.* A combination fare or rate for through transportation shall be treated as a unit (single-factor fare or rate) from point of origin to final destination. The combination fare or rate applied shall be the combination of the intermediate fares or rates in effect on the date on which the passenger begins his transportation or shipment was received by the carrier and all of the rules and other tariff provisions applicable to each intermediate fare or rate in effect on such date shall be observed and cannot be varied as to that passenger or shipment during the period of transportation to final destination; except that in foreign or overseas air transportation, carriers may, by appropriate tariff rules, provide for application of combination fares in effect on date of sale of ticket for transportation commencing not later than 30 days after the effective date of an increase in any intermediate fares when such transportation is sold prior to the issue date of tariffs stating increased fares, and provided that each factor of the combination is subject to like tariff provisions.

Subpart F—Requirements Applicable Only to Statements of Property Rates

§ 221.70 Definite unit of rate.

(a) All rates for the air transportation of property shall be clearly and explicitly stated in cents or dollars per pound, per 100 pounds, per kilogram, per ton of 2,000 pounds, per ton of 2,240 pounds, per United States gallon, or other definite unit of weight, measurement or value except that:

(1) [Reserved]

(2) Rates stated to apply on specific types of animals may be stated in cents or dollars per animal.

(b) When rates are stated in units of cubical measurement, such as per cubic foot, the tariff containing such rates, or its governing rules tariff, shall explicitly state how the cubical measurement of the articles shipped (including irregular shaped articles) is to be determined.

(c) Rates shall not be stated to apply per package or other shipping unit unless definite specifications as to size, weight, or capacity of the package or other shipping unit is specified in the tariff. This rule does not prohibit the publication of charges or rates other than by units for accessorial services performed by the carrier.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1125, 44 FR 33059, June 8, 1979]

§ 221.71 Quantities on which rates apply.

(a) *Quantities shall be specified.* When rates for the air transportation of property are to apply only on particular quantities, such quantities shall be specified in the tariff in connection with the rates or, in the case of class rates, they may be stated in connection with the class ratings. Such quantities shall be stated in the same unit of weight or measurement as the rate; for example, rates stated in cents per pound shall be subject to minimum weights in pounds, rates stated in cents per kilogram shall be subject to minimum weights in kilograms. The published quantities to which rates are subject may be stated as minimum quantities (for example, minimum weight —— pounds), or they may be stated in the form of quantity groups (for example, weight groups of "under 100 pounds", "100 pounds and over but less than 3,000 pounds", "3,000 pounds and over but less than 10,000 pounds", and "10,000 pounds and over"). These particular weights are shown for purposes of illustration only. This provision does not prohibit the publication of specific minimum charges in lieu of or in addition to minimum quantities.

(b) *Different rates subject to different quantities.* Different rates on the same commodities from and to the same points subject to different minimum quantities or quantity groups may be published provided the following requirements are complied with:

(1) A lower rate shall be provided on a greater minimum quantity or quantity group.

(2) A tariff containing such rates or its governing rules tariff shall contain a rule to the effect that when two or more rates subject to different minimum quantities are provided on the same commodity in the same shipping form from and to the same points over the same route, the lower of the two charges specified under paragraph (b)(2) (i) and (ii) of this section shall be applied:

(i) The charge computed on the quantity shipped at the rate applicable to such quantity, or

(ii) The charge computed on the next greater quantity, for which a lower rate is provided at the rate applicable to such greater quantity.

(3) All such rates of the same type (class, specific commodity, or general commodity) applying on the same commodities from the same point of origin to the same point of destination via the same route shall be published together continuously on one page or two or more successive pages or in one item, except as otherwise authorized in paragraph (c) of this section. This does not waive the requirements of § 221.75(b) as to publishing specific commodity rates in numbered items.

(c) *Volume rate conversion table.* Rates meeting the requirements of paragraph (b) of this section may be published in the following manner. Where a rate table names rates subject to a definite minimum weight, for example, "minimum weight 100 pounds," lower rates for greater minimum weights may be published in a separate conversion table substantially in the following form:

TABLE OF VOLUME RATES (IN DOLLARS PER 100 POUNDS)

This table is applicable only in connection with rates subject to minimum weight of 100 pounds which refer hereto for rates applicable to greater minimum weights.

Where the rate of subject to minimum weight 100 pounds is	The rate for the following minimum weights will be as specified in the respective columns below (minimum weight in pounds):				
	1,000	3,000	5,000	10,000	20,000
4.00	3.80	3.60	3.40	3.00	2.80

The particular minimum weights shown in the above form are for illustrative purposes only. Such conversion table shall be published immediately following each table or section naming the applicable base rates or, where a single conversion table applies to two or more tables or sections of base rates, such conversion table may be published immediately following the last table or section of rates in the tariff. Each conversion table shall provide that it is applicable only in connection with the base rates which refer to it (substantially as shown in the above form). Each page naming the base rates shall make specific reference to such conversion table for rates applicable to the greater minimum weights provided by the conversion table. Such reference shall be made substantially in the following manner:

For rates subject to minimum weights of —— pounds and over, apply Table of volume Rates on page ——.

§ 221.72 Types of property rates (class, general commodity, or specific commodity) which may be published.

(a) *Types permitted.* Except as otherwise authorized in this part, only the following types of rates shall be published to apply on the air transportation of property:

(1) Class rates (see § 221.73).

(2) General commodity rates (see § 221.74).

(3) Specific commodity rates (see § 221.75).

(b) *Order of publication in same tariff.* If both general commodity rates and specific commodity rates are published in the same tariff, the general commodity rates shall be published in tables or sections preceding the specific commodity rates. If both class rates and specific commodity rates are published in the same tariff, the class rates shall be published in tables or sections preceding the specific commodity rates.

§ 221.73 Class rates.

(a) *Captions.* Class rates shall be published under the caption "Class Rates" to be shown on each page containing such rates.

(b) *Governing classification and exceptions thereto.* A tariff of class rates shall contain a classification which shall assign a class rating to each specific article or commodity as required by § 221.39(a) or shall be governed by a separate tariff containing such class ratings (see § 221.105). Also, the class rates may be made subject to exceptions to the ratings in the governing tariff as provided in § 221.39(c).

(c) *Rates may be published on specified classes; percentage relationship.* (1) Class rates may be published for specified classes which shall correspond identically to the classes assigned to the various articles or commodities by the classification or exceptions thereto and on which such rates are applicable.

(2) The classes shall be specified, for example:

Method 1. The classes shall be consecutively numbered as "Class 1," "Class 2," "Class 3," "Class 4," etc., ranging from the class taking the highest rates to the class taking the lowest rates, respectively. All rates published for each class lower or higher than Class 1 shall bear the same percentage relationship to the respective Class 1 rates, for example, each Class 2 rate may equal 85 percent of the respective Class 1 rate, each Class 3 rate may equal 70 percent of the respective Class 7 rate. If it is found necessary to publish rates for classes higher than Class 1, such rates shall be assigned a class number which represents their percentage relationship to the respective Class 1 rates, for example, rates for "Class 125" shall equal 125 percent of the respective Class 1 rates.

Method 2. The rates in each class shall be assigned a class number which represents their percentage relationship of the respective "Class 100" rates. For example, rates for "Class 85" shall equal 85 percent of the respective "Class 100" rates, rates for "Class 70" shall equal 70 percent of the respective "Class 100" rates.

(d) *Arrangement.* The rates for each class shall be published in a single column and each column shall be captioned with its respective class. The columns shall be arranged on each page in the order of the classes ranging from the class taking the highest rates (to be published in the first rate column) to the class taking the lowest rates (to be published in the last rate column).

§ 221.74 General commodity rates and exception ratings thereto.

(a) *General commodity rates.* General commodity rates shall be published under the caption "General Commodity Rates." Such caption shall be shown on each page containing such rates. Each tariff which contains general commodity rates shall contain a rule captioned "Application of General Commodity Rates" which shall provide that the general commodity rates apply on all commodities except those which will not be accepted for transportation under the terms of the tariff or of governing tariffs. Each rule shall be published in the tariff containing the general commodity rates and not in a governing tariff. If it is desired to establish a rate on a particular commodity different from the general commodity rate, an exception rating to the general commodity rate (see paragraph (b) of this section) or a specific commodity rate (see § 221.75) shall be published on such commodity.

(b) *Exception ratings to general commodity rates.* Exception ratings to general commodity rates may be stated as percentages of general commodity rates applying from and to the same points over the same route or routes provided the following requirements are complied with:

(1) Such exception ratings shall be published under the caption "Exception Ratings to General Commodity Rates (stated as percentages of the General Commodity Rates)". Such caption shall be shown on each page containing the exception ratings.

(2) Such exception ratings shall be published in numbered items in the same tariff naming the general commodity rates to which they are exceptions, and shall follow the general commodity rates and precede specific commodity rates (if published therein) in the order of the tariff's contents.

(3) Such exception ratings shall be published to apply only on specific articles or commodities which shall be named directly in connection with the applicable exception ratings.

(4) Each exception rating shall be stated as a single percentage of the general commodity rates for all quantities on which the general commodity rates apply. However, where the general commodity rates vary according to the different quantities on which they apply, exception ratings may be stated as percentages of one or more of such general commodity rates provided the quantities to which the exception ratings apply are specifically stated.

(5) Such exception ratings shall not be published unless they are to apply from and to or between all of the points for which general commodity rates are provided in the tariff or in a designated table or section of the tariff except:

(i) If the tariff names general commodity rates for account of two or more carriers, such exception ratings may be restricted to apply for account of only certain carriers. If the tariff names joint general commodity rates in which such carriers participate, the tariff shall clearly indicate the extent to which such restricted exception ratings apply in connection with the joint general commodity rates.

(ii) If the tariff names general commodity rates between points in the continental United States and points outside thereof, such exception ratings may be restricted territorially to apply between, within, or from and to any of the following areas (but not portions of a single area):

Areas

Alaska.
Hawaii.
Continental United States.
United States of America.
One or more Territories of Possessions of the United States.
One or more foreign countries.
A definite geographic area larger than a country.

The term "continental United States," as used in this subparagraph, means all of the 48 contiguous States and the District of Columbia.

(6) Such exception ratings shall refer to a conversion table in the same tariff complying with paragraph (b)(7) of this section for the purpose of determining the rates in cents or dollars represented by the exception rating percentages of the general commodity rates.

(7) A conversion table shall be published immediately following such exception ratings. The conversion table shall contain in the first column, in numerical order ranging from the lowest to the highest amounts, the amounts of all of the base general commodity rates on which the percentages are to be applied. Each of the following columns shall be captioned with a percentage corresponding to a percentage in which an exception rating is stated. In each of the latter columns and directly opposite each base rate, the amount in cents or dollars represented by the stated percentage of the respective base rate shall be shown. Such columns shall be arranged in numerical order (according to percentages). A clear and definite explanation of how to use the conversion table shall be shown in connection therewith. Instead of showing in the first column all base general commodity rates from the lowest to the highest, the table may contain in the first column all amounts from $0.01 to $1.00 and all multiples of $1.00 to and including $50.00 with a plainly stated rule for using in combination amounts ascertained in the percentage column for separate portions of the general commodity rate. The rule must provide, for example, that if the general commodity rate is $2.77, the percentages for $2.00 and $0.77 are to be ascertained separately and combined.

§ 221.75 Specific commodity rates.

(a) *Applicable on specific articles or commodities named in tariff.* Specific commodity rates shall be published to apply only on specific articles or commodities which shall be specifically named in the tariff. Generic commodity descriptions shall not be used except to the extent permitted in paragraph (c) in this section. The commodity descriptions shall be set forth directly in connection with the respective rates to which they apply, except as otherwise provided in this section. Specific commodity rates shall apply only on the specific articles or commodities on which they are indicated by the tariff to apply and shall not apply on analogous articles or commodities. As far as possible, uniform commodity descriptions shall be use in all tariffs.

(b) *Page caption and numbered items.* Specific commodity rates shall be published under the caption "Specific Commodity Rates" to be shown on each page containing such rates. Specific commodity rates shall be published in numbered items except as otherwise provided in paragraph (d) in this section. Two or more commodities taking different specific commodity rates from and to the same points shall not be published in the same item. When an item containing specific commodity rates is continued to a successive page or pages, either the commodity description shall be repeated on each such successive page or the commodity description may be omitted from each such successive page provided such page refers to the commodity description in the following manner:

For commodity description of this item, see page ——.

(c) *When generic commodity descriptions may be used.* A generic commodity description may be used in connection with a specific commodity rate to designate a number of specific commodities or articles embraced within such generic description, without naming such specific commodities or articles in connection with the rate: *Provided,* That the following requirements are complied with:

(1) The generic commodity description shown in connection with the rate shall refer to a numbered item (other than a rate item) in the same tariff which contains a list of the specific commodities or articles embraced within such generic commodity description and on which the rate will apply. The generic commodity description shall be shown in connection with the rate exactly as it appears in the heading of the item to which reference is made. Such generic commodity

description and reference to the description item in the same tariff shall be shown in connection with the rate substantially in the following manner:

> Abrasives, as described in Item No. —— (as amended).

(2) The item to which such reference is made in accordance with paragraph (c)(1) of this section shall show:

(i) The same generic commodity description as a heading and the list of specific articles or commodities on which the rate is to apply, arranged in alphabetical order under such generic heading. For example, if the rate is indicated to apply on "Abrasives, as described in Item No. ——, as amended", the item to which such reference is made shall contain the following heading: "Abrasives, namely:" and the specific abrasives on which the rate is to apply shall be named in alphabetical order and indented under such heading, for example:

> Abrasives, namely:
>   Abrasive cloth or paper, including emery or sandpaper.
>   Alundum, corundum, emery or other natural or synthetic abrasive material.
>   Wheels, pulp grinding.

or,

(ii) The same generic commodity description as a heading followed by an explicit explanation of the application of the generic description.

(3) The items containing the lists of specific commodities or articles under their respective generic headings shall be published immediately preceding the rates sections or tables in the tariff, and shall be published under a heading (on each page) which shall provide that such commodity descriptions are applicable only when and to the extent that reference is made to such commodity descriptions. Each such list of articles or commodities under a generic heading shall be published in a separate item.

(4) The method of publication authorized in this paragraph shall not be used when a specific commodity rate applies on less than ten specific commodities or articles embraced within a generic commodity description. In such cases, the specific commodities or articles shall be named in connection with the rate.

(d) *Commodity descriptions published separately from rates when latter arranged alphabetically by points.* When all specific commodity rates in a tariff are published in tabular form and all points of origin and destination are arranged alphabetically in conformance with § 221.37(b) (1) through (4) throughout the table of specific commodity rates, the commodity descriptions applicable to such rates may be published separately provided the following requirements are complied with:

(1) The full commodity descriptions shall be published in numbered items (other than rate items) immediately preceding the table of specific commodity rates.

(2) The items containing the commodity descriptions shall be published under a heading (on each page) which shall state that such commodity descriptions apply only in connection with and to the extent that reference is made thereto by the specific commodity rates on pages —— through —— (or, in § ——) of the tariff.

(3) Directly in connection with each specific commodity rate, reference shall be shown to the respective item containing the description of the specific commodities or articles on which such rate applies.

§ 221.76 Precedence of authorized types of rates.

(a) *Exception ratings to general commodity rates versus general commodity rates.* When both general commodity rates and exception ratings to general commodity rates (stated as percentages of the general commodity rates) are published to apply from and to the same points via the same routes, the tariffs containing such rates and exception ratings (or their governing rules tariffs) shall contain a rule reading as follows:

> An exception rating to the general commodity rate, stated as a percentage of the general commodity rate, removes the application of the general commodity rate on the same quantity of the same article or commodity (in the same package or shipping form) from and to the same points over the same route.

(b) *Specific commodity rates versus general commodity rates and exceptions to general commodity rates.* When specific commodity rates, general commodity rates and exception ratings to general commodity rates (stated as percentages of the general commodity rates) are published to apply from and to the same points via the same routes, the tariffs containing such rates and exception ratings (or their governing rules tariffs) shall contain a rule reading as follows:

> A specific commodity rate removes the application of the general commodity rate and the exception rating to the general commodity rate on the same quantity of the same article or commodity (in the same package or shipping form) from and to the same points over the same route.

If no exception ratings to general commodity rates are published, the phrase "and the exception rating to the general commodity rate" shall be omitted from the above rule.

(c) *Specific commodity rates versus class rates.* When both specific commodity rates and class rates are published to apply from and to the same points via the same routes, the tariffs containing such rates (or their governing rules or classification tariffs) shall contain a rule reading as follows:

> A specific commodity rate removes the application of the class rate on the same quantity of the same article or commodity (in the same package or shipping form) from and to the same points over the same route.

(d) *Prescribed rules in forwarder tariffs.* When the rules prescribed in this section are published in tariffs of Air Freight Forwarders or International Air Freight Forwarders, the phrase "over the same route" shown in the prescribed rules shall be omitted from the rules published in such tariffs.

§ 221.77 Straight or mixed shipments.

(a) *Rates will apply on straight or mixed shipments unless restricted.* When a rate is subject to a commodity description which names two or more commodities, such rate shall apply on a straight shipment (consisting wholly of only one of the commodities) or on a mixed shipment (containing two or more of the commodities), unless the commodity description specifies that the rate applies on the commodities in straight shipments only or on the commodities in mixed shipments only. If a rate is restricted to apply only on mixed shipments, the restriction shall specify whether two or more or all of the commodities named in the applicable description must be included in a single shipment.

(b) *Mixed shipment rule.* Each rate tariff (or its governing rules or classification tariff) shall contain a rule stating how the rates and charges are to be applied to a single mixed shipment of two or more commodities for which the same or different rates or charges are separately published. The rule shall state which minimum quantity is applicable to the entire mixed shipment where different minimum quantities are provided on the commodities in a mixed shipment and, if different rates are made applicable to the commodities in such mixed shipment, the rule shall state which rate is applicable to any deficit quantity (the difference between the quantity shipped and the applicable minimum quantity when the latter is greater).

§ 221.80 Rate scale method of publishing rates.

(a) *When to be used.* In lieu of publishing the points of origin and destination directly in connection with the rates as required by § 221.52(a), the rate scale method of publication may be employed in the manner authorized by either paragraph (b) or (c) of this section. The rate scale method will normally reduce the volume of publication where a rate tariff names numerous points of origin and destination for class rates, general commodity rates or rates on one specific commodity (or one group of specific commodities taking the same rates) and the same rate or rates apply in many instances between different points of origin and destination. Where such conditions do not exist, the rate scale method shall not be used and the points of origin and destination shall be shown directly in connection with the rates as required by § 221.52(a) which results in a more simplified tariff format. When the rate scale method authorized by this section is employed, the volume rate conversion table method of publication under § 221.71(c) shall not be used.

(b) *Rate scale method without zone numbers.* The rate scale method without zone numbers consists of publishing two tables, namely, a table of rate scale numbers showing the rate scale number applicable between each point of origin and each point of destination and referring to a table of rates to determine the applicable rates for the respective rate scale numbers, and a table of rates listing such rate scale numbers (in numerical order) and showing the applicable rates for each rate scale number. Such tables shall conform to the following requirements:

(1) *Table of rate scale numbers.* The table of rate scale numbers shall be published immediately preceding the table of rates. The points of origin and destination shall be arranged in alphabetical order, conforming with § 221.37(b) (1) through (4), in the table of rate scale numbers which shall show the rate scale number applying from each point of origin to each point of destination (or applying between such points). All such pairs of points taking the same rates shall be assigned the same rate scale number. The heading on each page of the table shall refer to the table of rates substantially in the following manner: "To determine rates for the applicable rate scale number, refer to Section ——."

(2) *Table of rates.* The rate scale numbers shall be arranged in the table of rates in numerical order (from lowest to highest) and the rates for each rate scale number shall be shown directly in connection with the respective rate scale number. The rates shall conform to all requirements of this part. The heading on each page of the table shall refer to the table of rate scale numbers substantially in the following manner: "To determine the applicable rate scale number, refer to Section ——."

(c) *Rate scale method with zone numbers.* The rate scale method with zone numbers may be used where, in addition to the rate situations mentioned in paragraph (a) of this section, the points of origin and destination fall into zones with all points in each zone taking the same rates (common rated points). It shall not be used where such common rated points are not extensive, or where the method of publishing common rated points authorized by § 221.52(b) is used. The rate scale method with zone numbers consists of three parts, namely, an alphabetical index or list of origin and destination points showing the rate zone number assigned to each point, a table of rate scale numbers showing the rate scale number applicable between each pair of zone numbers (arranged in numerical order in headline and sideline format), and a table of rates which lists the rate scale numbers (in numerical order) showing the applicable rates for each rate scale number. Such tables shall conform to the following requirements:

(1) *Alphabetical index or list of points showing zone numbers.* A zone number shall be assigned to each and every point of origin or destination. Points taking the same rates shall be assigned the same zone number. Such zone numbers shall be published in a column captioned "Zone Number" in the index of points or, if the tariff contains no index of points, in an alphabetical list of origin and destination points placed immediately preceding the table of rate scale numbers. If such list or index of points is published in a tariff containing rates for account of two or more carriers, such list or index shall also show the carrier or carriers serving each respective point. The heading of each page of such index or list of points shall refer to the table of rate scale numbers substantially in the following manner: "To determine applicable rate scale numbers, refer to Section ———."

(2) *Table of rate scale numbers.* The table of rate scale numbers shall be published immediately preceding the table of rates. The zone numbers assigned to the points of origin and destination shall be arranged in numerical order in headline and sideline format in the table of rate scale numbers which shall show the rate scale number applying between each headline zone number and each sideline zone number (or from each headline zone number to each sideline zone number, or in the reverse direction).

All such pairs of zone numbers taking the same rates shall be assigned the same rate scale number. The heading on each page of the table shall refer to the index or list of points substantially in the following manner: "To determine the zone numbers of the points of origin and destination, refer to Section ———", and shall also refer to the table of rates substantially in the following manner: "To determine rates for the applicable rate scale number, refer to Section ———."

(3) *Table of rates.* The table of rates shall conform to the requirements of paragraph (b)(2) of this section.

(d) *Routing.* When the rate scale method of publication makes it impossible to show comprehensibly the required routing provisions directly in connection with the rates in accordance with § 221.41, such routing provisions shall be shown directly in connection with each respective rate scale number in the table of rate scale numbers. If the routing provisions cannot be indicated comprehensibly under the above methods, the rate scale method of publication shall not be used.

Subpart G—Governing Tariffs

§ 221.100 When reference to governing tariffs permitted.

(a) *Reference to other tariffs, etc., prohibited except as authorized.* A tariff shall not refer to nor provide that it is governed by any other tariff, document, or publication, or any part thereof, except as specifically authorized by this part.

(b) *Reference by rate or fare tariff to governing tariffs.* A fare tariff or a rate tariff may be made subject to a governing tariff or governing tariffs authorized by this subpart: *Provided,* That reference to such governing tariffs is published in the rate tariff or fare tariff in the manner required by § 221.31(a)(7).

(c) *Participation in governing tariffs.* A rate tariff or a fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such rate tariff or fare tariff are also shown as participating carriers in the governing tariff: *Provided,* That:

(1) If such reference to a separate governing tariff does not apply for account of all participating carriers and is restricted to apply only in connection with local or joint rates or fares applying over routes consisting of only particular carriers, only the carriers for whom such reference is published are required to be shown as participating carriers in the governing tariff to which such qualified reference is made.

(d) *Maximum number of governing tariffs.* A single fare tariff or a single rate tariff shall not make reference to conflicting governing tariffs.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1229, 46 FR 32552, June 24, 1981]

§ 221.101 Contents of all governing tariffs.

(a) *Contents.* Each governing tariff authorized by this subpart shall contain the following contents in the order named (in addition to the contents specified in the following respective sections of this subpart):

(1) Title page (§ 221.31).

(2) Correction number check sheet (in loose-leaf tariffs only) (§ 221.32).

(3) Table of contents (§ 221.33).

(4) List of participating carriers (§ 221.34).

(5) Explanations of abbreviations reference marks, and symbols (§ 221.35).

(6) The contents specified in §§ 221.102 through 221.108, whichever section is applicable to the particular type of governing tariff. The contents specified in two or more of such sections shall not be combined into one governing tariff except that a governing rules tariff authorized by§ 221.102 may include the contents specified in §§ 221.103 and 221.107.

(b) *Notation to be shown on title page.* Each governing tariff authorized by this subpart shall contain the following notation in distinctive type (to be shown above the issued and effective dates in the lower part of the title page):

> This tariff is applicable only in connection with tariffs making reference hereto.

§ 221.102 Rules tariff.

Carriers may publish all the rules and regulations as required by § 221.38, in separate governing tariffs, conforming to §§ 221.100 and 221.101, instead of being included in the rate tariffs or fare tariffs.

[ER-1062, 43 FR 34443, Aug. 4, 1978]

§ 221.103 [Reserved]

§ 221.104 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate government tariffs, conforming to §§ 221.100 and 221.101, instead of being included in the fares or rate tariffs or in the governing rules tariff authorized by § 221.102. This separate governing tariff shall contain no other rules or governing provisions.

[ER-1062, 43 FR 34443, Aug. 4, 1978]

§ 221.105 Classification tariff.

(a) *Requirements.* When the classification ratings required by § 221.39(a) are published in a separate classification tariff pursuant to § 221.39(b), such separate classification tariff shall conform with §§ 221.100 and 221.101 and the requirements in this section.

(b) *Index of commodities.* Each classification tariff shall contain an index of commodities conforming with § 221.36.

(c) *Rules or regulations.* Each classification tariff shall contain such rules or regulations as may be necessary to make the application of the classification ratings clear and definite. If the classification tariff is published for account of more than one carrier, any exceptions to such rules or regulations for account of a particular carrier shall be published in the tariff containing the class rates of that carrier.

(d) *Classification ratings.* All articles or commodities accepted for transportation shall be listed together with their applicable class ratings in the manner described in § 221.39 (a) (1) through (6). Any exceptions to the classification ratings shall be published in the tariffs containing the class rates governed by such classification tariff (see § 221.39(c)).

§ 221.106 Mileage or distance guide.

When a tariff containing mileage or distance rates or fares refers to a separate tariff for the applicable distances as permitted by § 221.54, such separate tariff of distances shall conform with §§ 221.100 and 221.101 and shall state distances in a clear and systematic arrangement.

§ 221.107 Aircraft equipment tariff.

If desired, the seating configuration data required by § 221.38(a)(6) may be published in a separate governing aircraft equipment tariff conforming to §§ 221.100 and 221.101 in lieu of publishing such data in the fare tariff or in the governing rules tariff authorized by § 221.102. Such aircraft equipment tariff may also include other definite data concerning the respective configurations, capacities or other physical characteristics of the various types of aircraft to the extent that such data are pertinent to the application of fares or charges in tariffs governed thereby. The seating configuration and other aircraft equipment data shall be arranged in a simple and systematic manner.

§ 221.108 Other types of governing tariffs.

Carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.110 Methods of amending tariffs.

(a) *Loose-leaf tariffs.* Amendment of a loose-leaf tariff shall be made only by (1) issuing revised pages or additional original pages to such tariff as provided in § 221.111, or (2) reissuing the tariff, that is, issuing a new tariff canceling completely the tariff to be amended. Supplements shall not be issued to a loose-leaf tariff except as specifically authorized in this part.

(b) *Book tariffs.* Amendment of a book tariff shall be made only by (1) issuing supplements to such tariff as provided in § 221.112, or (2) reissuing the tariff, that is, issuing a new tariff canceling completely the tariff to be amended.

(c) *Who may amend.* A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in Subparts S and T).

(d) *Amendment symbols.* All amendments of rates, fares, rules, and other tariff provisions accomplished by tariffs, supplements, revised pages, or original pages shall be indicated by the use of uniform amendment symbols in the manner prescribed by § 221.114.

(e) *Amendments involving suspension.* All amendments involving tariff provisions suspended by the Board or continued in effect by such suspension are also subject to the requirements of Subparts I, J, and K.

§ 221.111 Amending loose-leaf tariff by revised pages and additional original pages.

(a) *Amendment by revised pages*—(1) *Method.* The amendment of any page of a loose-leaf tariff shall be made by reissuing the particular page upon which the change, addition or cancellation is to be made. Reissuing a page means to cancel it by a new page which shall be designated as a revised page in the manner shown in paragraphs (a) (2) and (3) of this section and shall contain the same tariff provisions except for whatever additions, changes, or cancellations are to be made in such provisions. Where provisions are to be amended on only one of two pages published back-to-back on the same leaf, both pages shall be reissued on lawful notice, and the page containing no changes shall bear the notation "NO CHANGE OF THIS PAGE" at its top.

Reissuance of pages containing suspended matter or matter continued in effect by suspension shall comply with § 221.122 (a) or (b), whichever is applicable.

(2) *Revised page numbers.* Each revised page shall bear the same page number as the page which it amends and shall bear a consecutive revision number. A revised page which amends an original page shall be designated "1st Revised Page ——" and revisions of the same page subsequent to the 1st revision shall bear consecutive revisions numbers: "2nd Revised Page ——", "3rd Revised Page ——", "4th Revised Page ——", etc.

(3) *Page cancellation.* Each revised page shall direct the cancellation of the original or revised page which it amends and such cancellation shall be shown in the following manner (using page 10 as an example):

1st Revised Page 10
cancels
Original Page 10

or, when 1st Revised Page 10 is to be amended, it shall be canceled by 2nd Revised Page 10 in the following manner:

2nd Revised Page 10
cancels
1st Revised Page 10

In the case of revised title pages, the designation of the revised title page and the page cancellation shall be shown as "1st Revised Title Page cancels Original Title Page", "2nd Revised Title Page cancels 1st Revised Title Page", etc., in the above manner.

(4) *Revised title page shall show effective date of original tariff.* Each revised title page shall bear (immediately below its own effective date) the effective date of the original tariff which is to be shown in the following manner:

(Original tariff effective ————.) (show date).

(5) *Revised title page shall bring forward tariff cancellation.* Each revised title page shall bring forward without change any tariff cancellation or reference to a cancellation notice that is shown below the tariff's C.A.B. number on the original title page.

(b) *Adding original pages for expanded or added matter.* If, after a loose-leaf tariff has been issued, it becomes necessary to add pages thereto to provide for expanded or added tariff matter, such added page shall comply with the following requirements:

(1) A page added between pages shall be designated as an original page (not a revised page) and shall be given the same page number as the page

which it follows but a letter suffix (in alphabetical sequence) shall be shown in such page number, for example:

(i) In a tariff where matter is printed on only one face of each leaf, a page added between pages 4 and 5 shall be designated as "Original Page 4-A"; a page added between pages 4-A and 5 shall be designated "Original Page 4-B"; and so on.

(ii) In a tariff where matter is printed on both faces of each leaf, two consecutive pages printed back-to-back on the same leaf to be added between pages 30 and 31 shall be designated "Original Page 30-A" and "Original Page 30-B", respectively; two consecutive pages printed back-to-back on the same leaf to be added between pages 30-B and 31 shall be designated "Original Page 30-C" and "Original Page 30-D", respectively; and so on.

(2) When a page is added at the end of the tariff after the last page, the added page shall be designated as an original page and shall bear the next consecutive page number following the number of the last page of the tariff. For example, if the last page of the tariff is page 99, the added page shall be designated Original Page 100.

(3) A page shall not be added between two pages both bearing page numbers with letter suffixes.

(4) A page shall not be added between two pages printed back-to-back on the same leaf. For example, if a tariff contains pages 31 and 32 published back-to-back, pages designated as Original Pages 31-A and 31-B shall not be added to such tariff.

(5) Where pages are added to a tariff in which matter is printed on both faces of each leaf, original pages shall be issued simultaneously on both faces of each added leaf. If the added or expanded matter requires the space of only one page on the added leaf, the body of the page on the reverse side thereof shall bear the notation "This page intentionally left blank."

(c) *Correction numbers.* Each revised page and each original page (added to the tariff after issuance of the tariff) shall bear a consecutive correction number in the lower right-hand corner of the page. One series of consecutive correction numbers shall be used for each loose-leaf tariff. The first revised page or added original page issued to the tariff shall be "Correction No. 1" and subsequent revised or original pages issued to that tariff shall bear consecutive Corrections Nos. 2, 3, 4, etc. (see § 221.32).

(d) *Transferring matter from page to page.* When a revised page of a loose-leaf tariff is issued which omits rates, fares, rules, or other provisions formerly published on the page which it cancels and such omitted matter is transferred to a different page, such revised page shall make specific reference to the respective page on which such omitted matter will thereafter be found, for example:

For ——— (here identify the omitted matter) formerly published on —— Revised Page ——, see —— Revised Page ——.

The page to which such omitted matter is transferred shall refer, substantially in the following manner, to the respective page on which such matter was formerly published:

For ——— (here identify the transferred matter) in effect prior to the effective date hereof, see —— Revised Page —— (or, Original Page ——).

The cancellation of the matter from the former page shall be made effective simultaneously with the effective date of such matter on the page to which it is transferred. Subsequent revisions of the respective pages accomplishing such transfer shall omit the references required above with respect to such transferred matter.

(e) *Cancellation of omitted matter.* If a rate, fare, rule or other tariff provision on a page is to be canceled entirely and is not to be transferred to another page of the same tariff, the revised page which effects such amendment shall specifically show the cancellation of such provisions and identify the provisions to be canceled. For example, if a rule is canceled, the number and caption of the rule shall be brought forward on the new page but the body of the rule shall be omitted and, in lieu thereof, a statement that the rule is canceled shall be shown; or, if a fare is to be canceled, the points of origin and destination shall be brought forward on the new page but the fare shall be omitted and, in lieu thereof, a statement that the fare is canceled shall be shown. Alternatively, such cancellation (but not transfer of matter to another page) may be accomplished by omitting the matter to be canceled, provided that a footnote at the bottom of the revised page specifically identifies the matter to be canceled and directs its cancellation. All of the foregoing cancellation shall be omitted from subsequent revisions of the revised page which effected the cancellation.

(f) *Matter reissued before it becomes effective.* When rates, fares, rules, or other provisions which have not become effective are reissued and brought forward on a page which bears a general effective date earlier than the effective date of such rates, fares, rules, or other provisions, such page shall conform with the following:

(1) Such rates, fares, rules, or other provisions shall bear their original effective date, shall be designated as reissued matter, and shall indicate the page from which they are reissued. Such information shall be shown, either directly in connection with the reissued matter or by the use of a reference mark (explained on the same page), in the following manner:

Effective ———. Released from ——. Revised Page ——.

(2) The general effective date of the page shall be qualified by a notation reading "(Except as noted)" to be shown directly following the general effective date.

(g) *Cancellation of participating carrier.* When a participating carrier is canceled by a revised page, the fares (or rates) and other provisions of the tariff insofar as they apply in connection with such carrier shall be canceled at the same time, by either of the following methods:

(1) Such cancellation shall be accomplished by revising the particular pages containing the fares (or rates) and other provisions applying in connection with the canceled participating carrier, or

(2) Such cancellation shall be accomplished by publishing the following statement (following the list of participating carriers) which shall be referred to in connection with the elimination of the carrier from the list of participating carriers:

PARTICIPATING CARRIER CANCELLATION

(Name of canceled participating carrier) eliminated as participating carrier in this tariff and all rates (or fares) and other provisions published in connection with that carrier canceled effective ——— by ——— Revised Page ——.

If the eliminated carrier is designated by abbreviation or carrier number in the tariff, show the carrier abbreviation or number in parentheses immediately following the carrier's name in the above statement. Also, in the above statement, show the effective date of the carrier's elimination as a participating carrier and the revised page on which the above statement is initially published. Such cancellation statement shall be brought forward on subsequent revisions of the page until such time as specific cancellation of all rates, fares and other provisions in connection with the eliminated carrier has been accomplished by revising the pages affected. Such specific cancellation shall be fully accomplished not later than 180 days after the effective date of the cancellation of the carrier's participation.

§ 221.112 Amending book tariff by supplement (also applicable to supplements to loose-leaf tariffs when such supplements are specifically authorized in this part).

(a) *Form of supplement.* (1) A supplement shall be constructed in the same manner and its contents arranged in the same order as the tariff to which it is issued, subject to the provisions of this section.

(2) When points in a tariff are given station numbers, index numbers, or similar designations, the same designation shall be used for the same point in all supplements to the tariff.

(b) *Title page of supplement.* Except as otherwise provided in this part, the title page of each supplement shall contain the following information to be shown in the order named below and shall contain no other matter:

(1) *Supplement and C.A.B. numbers.* Each supplement shall bear a consecutive supplement number as follows: The first supplement issued to a par-

ticular tariff shall be designated as Supplement No. 1 and subsequent supplements to the same tariff shall be consecutively numbered Supplements Nos. 2, 3, 4, etc. The supplement number and the C.A.B. number (of the tariff to which the supplement is issued) shall be shown in the upper right-hand corner of the title page in the manner shown in the following example:

Supplement No. 1

to

C.A.B. No. 1

(2) *Specifying canceled and effective supplements.* Each supplement shall specify on its title page the supplements which it cancels in full and the supplements which remain in effect. Such provisions shall be shown immediately below the supplement and C.A.B. numbers in the upper right-hand corner of the title page in the manner shown in the following example:

Supplement No. 3

to

C.A.B. No. 1

(Cancels Supplement No. 1)

Supplements Nos. 2 and 3 are the only effective supplements.

The only cancellation of prior supplements or of the tariff which shall be shown on the title page of a supplement shall be the complete cancellation of prior supplements or of the tariff as provided in this paragraph and in paragraph (b)(3) of this section. Specific cancellation of the particular items, rules, rates, fares or other provisions to be amended shall be made within the supplement in the manner required by this section.

(3) *Specifying cancellation of original tariff.* When a tariff is conceled in full by a supplement issued thereto, such cancellation shall specify the C.A.B. number of the tariff and shall be shown immediately under the supplement and C.A.B. numbers in the upper right-hand corner of the title page of the supplement in the manner shown in the following example:

Supplement No. 4

to

C.A.B. No. 1

cancels

C.A.B. No. 1

(Also, see § 221.113(d).)

(4) *Provisions to be reproduced from title page of tariff (as amended).* The following provisions appearing on the title page of the tariff (to which the supplement is issued), as amended, shall be shown on the title page of the supplement in the same order and location as it appears on the title page of the tariff, as amended:

(i) Name of issuing carrier or agent,

(ii) Title of tariff (the supplement number may also be shown immediately above the title of the tariff, if desired),

(iii) Description of rates, fares, or other contents of tariff,

(iv) Description of territory.

(5) *Reference to Special Tariff Permissions, orders, and regulations.* Where an entire supplement is issued pursuant to a Special Tariff Permission, order, or regulation which requires the supplement to bear a notation referring to such Special Tariff Permission, order, or regulation, such notation shall be shown in the manner required thereby. If only certain provisions, and not the entire supplement, are issued pursuant to such permission, order, or regulation, such notation shall be shown in connection with those provisions and not on the title page.

(6) *Expiration date.* When a tariff is indicated on its title page to expire with a specified date, the title page of a supplement to such tariff shall indicate that the supplement expires with the same date. When a supplement is to expire with a given date, for the above or other reasons, the expiration date shall be shown in distinctive type in the following manner:

This supplement expires with ——— (Show date) unless sooner canceled, changed, or extended.

If, however, only a portion of the supplement is to expire with a given date, such expiration date shall not be shown on the title page but shall be shown in connection with the particular item, rule, or other provision which is to expire.

(7) *Issued date.* The date on which the supplement is issued shall be shown in the lower left-hand portion of the title page. Tariffs must be received by the Board on or before the designated issued date. (See § 221.160(d) and § 221.171 of this part.)

(8) *Effective date.* The date on which the fares, rates, charges, rules and other provisions in the supplement will become effective shall be shown in the lower right-hand portion of the title page (See § 221.160 for required notice.)

(9) *Issuing officer or agent.* The name, title, and address of the issuing officer or the issuing agent shall be shown centered at the bottom of the title page. If the supplement is issued by a corporate agent, the name, title and business address of the person designated by the corporation to issue and file tariffs in the corporation's name shall also be shown. The issuing officer or employee of a carrier or the person so designated by a corporate tariff agent shall not use the title "Agent" or "Alternate Agent" (see §§ 221.10 and 221.11).

(c) *Table of contents.* A supplement shall contain a table of its contents conforming to § 221.33.

(d) *List of participating carriers.* (1) When a tariff contains a list of participating carriers (see § 221.34), each supplement issued thereto shall contain the following provision:

> *List of participating carriers.* The list of participating carriers is as shown in tariff.

If amendment of the list of participating carriers has been made in prior supplements, add "as amended" after the word "tariff" in the above statement. If additions, eliminations, or changes are to be made in the list of participating carriers, such amendments shall be published in the following manner:

LIST OF PARTICIPATING CARRIERS

The list of participating carriers is as shown in tariff, as amended, except:

Revised as indicated	Participating carriers	Concurrence No.
Add	Boe Air Lines, Inc	1
Change	Doe Airways, Inc	2
Cancel	Roe Airline Co	

NOTE: Concurrence numbers may be omitted if carrier complies with § 221.34(e). The listing of participating carriers in a supplement shall otherwise conform to the requirements of § 221.34.

(2) When the participation of a carrier in a tariff is canceled by supplement, the fares or rates and other provisions of the tariff, so far as they apply in connection with such carrier, shall be canceled at the same time. Such cancellation shall be accomplished by amending the affected items or other provisions in the manner prescribed by paragraphs (h) and (i) of this section.

(e) *Index of commodities.* A supplement shall contain an index of the commodities therein conforming to § 221.36.

(f) *Index of points.* A supplement shall contain an index of the points therein conforming to § 221.37.

(g) *Explanations of abbreviations, reference marks, and symbols.* All abbreviations, reference marks, and symbols used in a supplement shall be explained and are subject to the provisions of § 221.35. Each page of a supplement on which abbreviations, reference marks, or symbols are used but not explained thereon shall refer to the page of the supplement or to the page of the original tariff which contains their explanations.

(h) *Amending numbered items, rules, and similar units*—(1) *Method of amending.* When any provision contained in a numbered item, rule, or similar unit is amended, all provisions (in their amended form) of such item, rule, or unit shall be published in their entirety in the supplement effecting such amendment and shall be given the same item, rule, or unit number followed by a letter suffix (each item, rule, or unit number shall be assigned letter suffixes in consecutive alphabetical sequence, commencing with "A"). The revised item, rule, or unit containing the amended provisions shall direct the cancellation of the former item, rule, or unit which it amends. The numbers of such revised items, rules, or units and the cancellation of such former items, rules, or units shall be shown in the following manner (using successive amendments in an Item 10 series as examples): When Item 10 is to be amended, the revised item containing the amended provisions shall show "Item 10-A cancels Item 10"; when Item 10-A is to be amended, the revised item containing the amended provisions shall show "Item 10-B cancels Item 10-A"; when Item 10-B is to be amended, the revised item containing the amended provisions shall show "Item 10-C cancels Item 10-B"; and so on. Using similar successive amendments in a Rule 10 series as examples, the successive issues of Rule 10 shall show "Rule 10-A cancels Rule 10"; "Rule 10-B cancels Rules 10-A"; "Rule 10-C cancels Rule 10-B" and so on.

(2) *Withdrawing an item, rule, or similar unit.* When all provisions in a numbered item, rule, or similar unit are to be canceled, such cancellation shall be made by amending the time, rule, or similar unit in the manner prescribed by paragraph (h)(1) of this section, but the canceled matter shall not be reproduced in the revised item, rule, or like unit except to the extent necessary to identify the subject matter which is being canceled. For example, only the caption or subject of a rule or the generic commodity caption of a rating or rate item shall be shown when such rule, rates or ratings are to be canceled.

(3) *Reestablishing expired or canceled items, rules, or other units.* The provisions of an expired or canceled item, rule, or similar unit may be reinstated only by republishing such provisions under a new effective date allowing lawful notice. The item, rule, or similar unit which effected the cancellation of such provisions or which contained the expired provisions shall be amended in the manner prescribed by paragraph (h)(1) of this section and the provisions shall be republished in the revised item, rule, or similar unit.

(4) *Transferring matter.* When all or part of the matter in a numbered item, rule, or similar unit is to be transferred to another portion of the tariff or to a different tariff, such item, rule, or similar unit shall be amended in the manner prescribed by paragraph (h)(1) of this section and shall specify the cancellation of such matter and where it will thereafter be published; for example, "Item 10-A cancels Item 10; rates formerly appearing in Item 10 but not shown herein will be found in Item ——(or in Item —— of C.A.B. No. ——)." The item, rule, or similar unit, or different tariff, to which the matter has been transferred shall show reference to the item, rule or similar unit, or other tariff, which formerly contained the transferred matter.

(i) *Amending matter not published in numbered units.* When an amendment is made in a provision which is not published in a numbered item, rule, or similar unit, the changed provision shall be published in its entirety in a supplement. The cancellation of the former provision shall be shown directly in connection with such changed provision, and such cancellation shall refer to the page of the tariff or supplement containing the former provision and clearly specify the matter to be canceled. Where the provision to be amended is published in a prior supplement, the cancellation of such provision shall specify both the page of the prior supplement and the page of the tariff which contained the corresponding provision; or, if the provision was published initially in a supplement and not in the tariff, the cancellation shall specify both the page of the prior supplement and the page of any effective supplement previously issued thereto which contained the corresponding provision.

(j) *Omitted matter.* When a supplement canceling a previous supplement omits points of origin or destination, routes, rates, fares, ratings, rules, or other provisions appearing in the previous supplement, the new supplement shall specifically indicate the cancellation of such omitted matter, and if such omission effects changes in rates, fares, charges, or services, that fact shall be indicated by the use of the uniform symbols prescribed in § 221.114.

(k) *Reissued matter*—(1) *Designating reissued matter.* When a supplement cancels a preceding supplement to the same tariff, those provisions and amendments in the canceled supplement which have not been amended by subsequent supplements and which are not to be amended by the new supplement shall be brought forward without change in the new supplement (except that amendment symbols required by § 221.114 shall not be brought forward). Such matter brought forward without change from one supplement to another shall be specifically designated "Reissued" in distinctive type and shall show the number of the original supplement form which it was reissued. For example, if Item 5-A was published in Supplement No. 1 and is brought forward without change to Supplement No. 2 (canceling Supplement No. 1), the following notation shall be shown in Item 5-A in Supplement No. 2: "Reissued from Supplement No. 1"; if Item 5-A is again brought forward without change, for example, in Supplement No. 3 (canceling Supplement No. 2), it shall continue to bear the same notation indicating that it is reissued from Supplement No. 1. Such reissued matter may also be indicated by the use of a reference mark shown preceding such matter and explained in the supplement in which it is used. When the latter method is used, the reference mark shall consist of a number within a square and the number shall be that of the original supplement from which the matter is reissued, for example, the reference mark □ shall be used to indicate matter reissued from Supplement No. 1. The reference marks shall be explained in the following manner:

□—Reissued from Supplement No. 1.
□—Reissued from Supplement No. 2.

Such reference marks comprised of a number within a square shall be used only for the above purpose and shall not be used for any other purpose.

(2) *Matter reissued before its effective date.* When matter published in a supplement is brought forward as reissued matter in a subsequent supplement which bears a general effective date earlier than the effective date of such reissued matter shall be included in the reissued notation required by paragraph (k)(1) of this section. For example, if Item 5-A published to become effective May 1, 1952 in Supplement No. 1 is brought forward without change in Supplement No. 2 (canceling Supplement No. 1) which bears a general effective date of April 15, 1952, Item 5-A shall bear the following notation indicating its effective date and that it is reissued matter:

Effective May 1, 1952. Reissued from Supplement No. 1.

When the supplement contains reissued matter to become effective after the general effective date of the supplement, the notation "(Except as otherwise provided herein)" shall be shown directly after the general effective date on the title page of the supplement.

(3) *Expired matter.* When an item, rule, or other matter in a supplement has expired by its own terms and such supplement is canceled by a subsequent supplement, the latter supplement shall identify, but not republish, the matter which has expired and shall show when it expired and the supplement in which it appeared when it expired. For example, if the expired matter is an item which formerly contained commodity rates, the item number and cancellation and an identifying portion of the commodity description should be shown with a statement reading substantially: "This term expired with —— in Supplement No. ——." Such notation shall be shown in all successive reissues of the supplement.

(l) *Maximum supplemental matter permitted.* (1) Except as authorized in paragraphs (l)(2), (3), and (4) of this section, a book tariff containing the number of pages stated in Column 1 below may have in effect at any time not more than the number of supplements shown directly opposite thereto in Column 2 below and all supplements in effect at any time to such tariff may contain in the aggregate not more than the aggregate number of pages indicated directly opposite thereto in Column 3 of this subparagraph.

Column 1—Number of pages in tariff	Column 2—Number of effective supplements permitted	Column 3—Aggregate number of pages permitted in aggregate of effective supplements
4 or less	None	None.
Over 4 but not over 12	1	4.
Over 12 but not over 16	1	(See Note 1.)
Over 16 but not over 80	2	(See Note 1.)
Over 80 but not over 200	3	(See Note 1.)
Over 200	4	(See Note 1.)

NOTE 1: 33⅓ percent of the number of pages in the original tariff. Resulting fractions of a page shall be increased to a whole page.

In determining the number of pages in a tariff or an effective supplement, the title page of the tariff and the title pages of the supplements shall be counted in all instances, and every page of an effective supplement shall be counted regardless of whether the provisions on a particular page are in effect.

(2) The supplements (and the numbers of pages therein) authorized or required to be filed under the terms of the following sections shall be in addition to the number of supplements and volume of supplemental matter permitted by the terms of paragraph (l)(1) of this section:

Sec.
221.113(d) (Cancellation supplement)
221.121 (Suspension supplement)
221.131 (Vacating supplement)
221.140 (Provided the supplement contains only matter described in § 221.140)
221.223(c) (Take-over supplement issued by alternate agent)
221.224(b) (Take-over supplement issued by new principal agent)
221.231 (Adoption supplement)

(3) A supplement which has been canceled except as to matter suspended by the Board or a supplement suspended in full by the Board shall be in addition to the maximum number of supplements and supplement pages permitted by paragraph (l)(1) of this section. If, upon termination of the suspension, such supplements result in a greater number of effective supplements or supplement pages than permitted by paragraph (l)(1) of this section, the tariff shall be brought into conformity with paragraph (l)(1) of this section by the next amendment of the tariff issued subsequently to the termination of the suspension.

(4) When a tariff is continued in effect by reason of the Board's suspending an entire tariff, any supplements lawfully issued and filed during the suspension period to the tariff continued in effect by the suspension shall be in addition to the maximum number of supplements and supplement pages permitted by paragraph (l)(1) of this section. If the maximum number of supplements or supplement pages permitted under paragraph (l)(1) of this section is exceeded under this authority and the Board orders the cancellation of the suspended tariff, the tariff which was continued in effect by the suspension shall be brought into conformity with paragraph (l)(1) of this section by a supplement filed within 120 days after the date of such order of the Board or such tariff shall be reissued within that time.

(Secs. 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C. 1324, 1373, 1482, as amended)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1104, 44 FR 9577, Feb. 13, 1979]

§ 221.113 Reissuing and canceling tariffs; transferring matter to other tariffs.

(a) *One or more tariffs superseded by one new tariff.* (1) When one new tariff is issued to supersede one or more previously filed tariffs (of the same issuing carrier or agent) which are to have no further effect, such new tariff shall direct the cancellation of the tariff or tariffs to be superseded. Such cancellation shall specify the C.A.B. numbers of the tariff or tariffs to be canceled and shall be shown in the upper right-hand corner of the title page of the new tariff (immediately below its C.A.B. number) in the following manner:

C.A.B. No. ——

cancels

C.A.B. No. ——

(2) If the tariff or tariffs to be canceled contain any rates, fares, or other tariff provisions which are to be canceled and not brought forward in the new tariff, the new tariff shall contain

a notice reading substantially as follows:

Notice

Rates (or fares, charges, rules, ratings, as the case may be) formerly published in C.A.B. No. —— but not brought forward herein are hereby canceled.

Such notice shall be published immediately following the table of contents and reference thereto shall be shown on the title page of the new tariff, immediately below the cancellation prescribed by paragraph (a)(1) of this section, in the following manner:

C.A.B. No. ——

cancels

C.A.B. No. ——

(See Notice on Page —— hereof)

(b) *One tariff superseded by two or more new tariffs.* When two or more new tariffs are issued to supersede one previously filed tariff (of the same issuing carrier or agent) which is to have no further effect, a supplement shall be issued to the tariff to be superseded and such supplement shall direct the cancellation of the tariff in the manner prescribed by § 221.112 (b) (3) and paragraph (d) (2) of this section and shall refer to the new tariffs in the manner required thereby. Each of the new tariffs shall direct the following cancellation of the tariff to be superseded (to be shown in the upper right-hand corner of the title page of each new tariff immediately below its C.A.B. number):

C.A.B. No. ——

cancels

C.A.B. No. ——

(to the extent shown in

Supplement No. —— thereto)

(c) *Transferring rates, fares or provisions from one tariff to another.* When all or a portion of the rates, fares, or other provisions of a tariff are to be transferred to another tariff or other tariffs, such transfer shall be accomplished by the following amendments (except that this paragraph shall not apply when paragraphs (a) and (b) of this section are applicable):

(1) If no effective provisions are to remain in the tariff from which the provisions are transferred, the issuing carrier or agent shall issue a supplement thereto canceling such tariff in its entirety in the manner prescribed by § 221.112 (b) (3) and paragraph (d) (2) of this section and stating where the transferred provisions will thereafter be found.

(2) If only a portion of a tariff's provisions are to be transferred, the tariff shall be amended (in the manner required by § 221.110) by specifically canceling the provisions to be transferred and, in connection with such cancellation, a reference shall be shown to the tariff or tariffs (specifying their C.A.B. numbers) to which the provisions are transferred.

(3) The tariff or tariffs to which the provisions are to be transferred shall be amended (in the manner prescribed by § 221.110) by adding the transferred provisions thereto effective on the same date as the date on which the cancellation of such provisions from the former tariff becomes effective. The publication effecting the addition of the transferred provisions shall refer to the former tariff in the following manner:

(i) If the publication to which the provisions are transferred is a new tariff (issued by the same issuing carrier or agent of the former tariff), it shall direct a partial cancellation of the former tariff and such cancellation shall be shown in the following manner (in the upper right-hand corner of the title page of the new tariff immediately below its C.A.B. number):

C.A.B. No. —— cancels C.A.B. No. —— to the extent shown in Supplement No. —— (or, —— Revised Page ——) thereto

(ii) If the publication to which the provisions are transferred is a new tariff (issued by an agent or carrier other than the issuing agent or carrier of the former tariff), the new tariff shall bear the following notation "(see notice on page —— hereof)" in the upper right-hand corner of the title page (immediately below the C.A.B. number and any cancellation thereunder and the notice referred to shall be shown following the table of contents and shall read substantially:

Notice

Rates (or fares, rules, etc.), herein applying (—— briefly identify transferred rates, etc. ——) were formerly published in C.A.B. No. —— issued by ———.

(iii) If the transferred provisions are added by supplement, revised page or original page to an existing tariff (issued by the same or different issuing carrier or agent), reference to the former tariff shall be shown in connection with the added provisions in such supplement, revised page or original page and such reference shall read substantially:

These rates (or fares, rules, etc.) were formerly published in C.A.B. No. ——— issued by ———.

(d) *Canceling tariff by supplement*—(1) *When permitted.* A supplement shall be issued to a tariff (including a loose-leaf tariff) for the purpose of canceling such tariff in its entirety when:

(i) All of the fares, rates, or other tariff provisions in such tariff are to be canceled entirely and are to have no further application; or

(ii) A later issue of such tariff failed to cancel such tariff as required by paragraph (a) of this section; or

(iii) Other paragraphs of this section require that a tariff be canceled by supplement; or

(iv) Suspended matter is to be canceled, under authority of the Board, from a tariff which has previously been canceled except as to such suspended matter.

(2) *Cancellation notice.* In addition to directing the cancellation of the tariff (by C.A.B. number) in the manner prescribed by § 221.112(b) (3), such cancellation supplement shall contain a cancellation notice stating what disposition has been made of the rates, fares, or other provisions formerly published in the canceled tariff. When such rates, fares, or other provisions will thereafter be published in other tariffs, the notice shall refer to such other tariffs (by C.A.B. number) and, if reference is made to two or more tariffs, the notice shall briefly describe the respective rates, fares, or other provisions which will be found in each of such tariffs, for example:

Cancellation Notice

——— (title of tariff), C.A.B. No. ——, issued by —— is hereby canceled.

See C.A.B. No. —— issued by ——— for rates between ——— and ———.

See C.A.B. No. —— issued by ——— for rates between ——— and ———.

If the canceled tariff contains any rates, fares, or other provisions which are to be canceled and not brought forward in the new tariffs, the following cancellation statement shall be added to the above notice:

Rates (or fares, etc.) formerly published herein but not carried forward to the above tariffs are hereby canceled.

The cancellation notice in this subparagraph shall be published either in the body of the title page of the cancellation supplement (below the territorial application and above the issued and effective dates) or on the next page.

§ 221.114 Amendment symbols to indicate changes in rates, fares and other provisions.

(a) *Uniform amendment symbols required.* All tariffs, supplements, original pages, and revised pages shall indicate the changes made thereby in existing rates, fares, charges, routings, ratings, rules, and other tariff provisions and shall indicate the character of each change, that is, whether it results in a reduction or an increase in fares, rates, or charges or is a change resulting in neither increase nor reduction. The changes and their character shall be indicated by the use of the following uniform amendment symbols and, except as provided in paragraph (b) of this section, shall be shown immediately in connection with and preceding each change

(R) or ŏ to denote increases.
(A) or ♦ to denote reductions.
(C) or ▲ to denote changes which result in neither increases nor reductions.
(N) or ■ to denote addition.

(b) *Indicating general changes*—(1) *Changes of same character in all fares, rates, or charges.* When a change of the same character (either increase or reduction) is effected by all of the rates, fares, or charges in a tariff or supplement, or a page thereof, including a revised page or added original page, that fact and the character of such change may be indicated in distinctive type at the top of the title page of such tariff or supplement, or at the top of such page, as the case may be, in the following manner:

(Notation for title page of tariff or supplement)

ALL ** IN THIS ISSUE ARE ****.

(Notation for other pages)

ALL ** ON THIS PAGE ARE ****.

**—show RATES, FARES, or CHARGES, whichever is appropriate.
****—show INCREASES or REDUCTIONS, whichever is appropriate.

(2) *Changes of same character in substantial portion of rates, fares, or charges.* The notations prescribed in paragraph (b)(1) of this section may be qualified by adding thereto the words "unless otherwise indicated" and such qualified notations may be used, in the manner described in paragraph (b)(1) of this section, to indicate changes of the same character in a substantial portion but not all of the rates, fares, or charges in a tariff, supplement, or a page thereof, including a revised page or added original page. When this method is used to indicate such changes, any rates, fares, or charges which are exceptions to the qualified notation used shall be indicated by:

(i) Showing a bold-faced dot "O" or the symbol "(K)" in connection with and preceding a rate, fare, or charge in which no change has been made, and

(ii) Using the proper amendment symbol prescribed in paragraph (a) of this section for the purpose of indicating the character of any changes which are not indicated by the notation used on the title page or at the top of the page, as the case may be.

(c) *Explanations and uniform use of symbols.* Explanations of the symbols prescribed in paragraphs (a) and (b) of this section shall be provided in the manner prescribed by § 221.35 and such symbols shall not be used for any other purpose.

(d) *Symbols and notations not to be brought forward.* When a symbol or notation prescribed by this section is used in a tariff, supplement, or page, such symbol or notation shall not be carried forward into reissues, supplements, or revised pages when the matter in connection with which they were used is reissued without change.

§ 221.115 Reinstating canceled or expired tariff provisions.

Any rates, fares, rules, or other tariff provisions which have been canceled or which have expired may be reinstated only by republishing such provisions and posting and filing the tariff publications (containing such republished provisions) on lawful notice in the form and manner required by this part.

§ 221.116 Supplement to loose-leaf tariff authorized when service terminated or suspended.

When the Board authorizes or requires a carrier to suspend air transportation service to and from a particular point, or terminates authority to serve a particular point, supplements may be issued to loose-leaf tariffs for the purpose of canceling rates, fares, or other provisions therein applying to, from, at, or via such point for account of such carrier. The title page of a supplement issued hereunder shall bear the following notation on its title page, "Issued under § 221.116 of Economic Regulations of Civil Aeronautics Board." A single tariff shall have not more than one supplement, issued under authority of this section, in effect at any one time. Supplements issued hereunder shall contain no provisions other than the cancellation of rates, fares, or other provisions published under the above authority. When a supplement is issued under authority of this section, the canceled rates, fares, or other provisions shall be specifically removed from the tariff pages on which they appear by reissuing such pages not later than 180 days after the effective date of such supplement.

Subpart I—Suspension of Tariff Provisions by Board

§ 221.120 Effect of suspension by Board.

(a) *Suspended matter not to be used.* A rate, fare, charge, or other tariff provision which is suspended by the Board, under authority of section 1002(g) of the act, shall not be used during the period of suspension specified by the Board's order.

(b) *Suspended matter not to be changed.* A rate, fare, charge, or other tariff provision which is suspended by the Board shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Board.

(c) *Suspension continues former matter in effect.* If a tariff publication containing matter suspended by the Board directs the cancellation of a tariff, supplements, or loose-leaf tariff page, or any portion thereof, which contains fares, rates, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) *Matter continued in effect not to be changed.* A rate, fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Board shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Board, except that such matter may be reissued without change during the period of suspension.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-991, 42 FR 19126, Apr. 12, 1977]

§ 221.121 Suspension supplement.

(a) *To be filed immediately to either book or loose-leaf tariff.* Upon receipt of an order of the Board suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Board a consecutively numbered supplement for the purpose of announcing such suspension. Such supplement, referred to in this subpart as a suspension supplement, is required to be filed to a loose-leaf tariff as well as a book tariff and shall conform fully with the provisions of this section.

(b) *Title page of suspension supplement.* The title page of a suspension supplement shall be constructed in the manner prescribed in § 221.112(b) except that it shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) *Suspension notice.* The title page of a suspension supplement shall contain a notice of suspension (to be shown immediately below the description of tariff contents and territory) which shall:

(1) Indicate what particular rates, fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Board's docket number and order number which suspended such tariff matter,

(4) Give specific reference to the tariffs (specifying their C.A.B. numbers), supplements, revised pages, original pages, items, etc., which contain the rates, fares, charges, or other tariff provisions continued in effect.

NOTE: Where impracticable to provide on the title page the required detailed suspension notice, the title page may, under the caption "Suspension Notice", make specific reference to where the detailed suspension notice is provided in the supplement.

The following are illustrations of such notices of suspension:

(When a portion of the fares on a revised page are suspended):

SUSPENSION NOTICE

The fares applying between New York, N.Y., and Chicago, Ill., on 1st Revised Page 75 of this tariff are suspended to and including August 23, 1953 by Civil Aeronautics Board order No. E —— in Docket No. ——. Such fares shall not be used on or before August 23, 1953. For fares between the above points continued in effect as a result of the suspension, see Original Page 75 of this tariff.

(When an item in a supplement is suspended):

SUSPENSION NOTICE

Item No. 10-B in Supplement No. 5 is suspended to and including August 23, 1953 by Civil Aeronautics Board order No. E —— in Docket No. ——. The rates and other provisions in Item No. 10-B of Supplement No. 5 shall not be used on or before August 23, 1953. For rates continued in effect as a result of the suspension, see Item No. 10-A in Supplement No. 4.

(d) *Quote Board's order in part.* A suspension supplement shall quote the following portions of the Board's order of suspension (to be shown on the page following the title page):

(1) The heading of the order,

(2) The portions describing the suspended matter,

(3) The paragraph naming the date to which such matter is suspended,

(4) The paragraph prohibiting changes in the suspended matter,

(5) The paragraph prohibiting changes in the matter continued in effect by the suspension.

(e) *Cancel reissue of suspended matter.* When the Board has suspended a loose-leaf tariff page or a supplement in whole or in part, it may occur that prior to receipt of the suspension order, the issuing carrier or agent has transmitted for filing a revised page or a supplement subsequent to that containing the suspended matter and such subsequent revised page or supplement reissues without change the matter suspended in the previous loose-leaf tariff page or supplement. In such circumstances, the suspension supplement required by this section shall:

(1) Cancel such reissued matter published in the subsequent revised page or supplement, and

(2) Amend the cancellation which such subsequent revised page or the title page of such subsequent supplement directs of the loose-leaf page or of the supplement containing the suspended matter. Such cancellation shall be amended so as to exclude cancellation of the suspended matter. The suspension supplement accomplishing such amendments shall be filed promptly since a page or supplement which cancels suspended matter without authority of the Board is subject to rejection.

§ 221.122 Reissuing tariff publications suspended in part or containing matter continued in effect by suspension.

(a) *Loose-leaf tariff page suspended in part.* When a loose-leaf tariff page suspended in part is reissued, the reissue of such page shall conform with the following requirements:

(1) The revised page (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The revised page (reissue) shall direct the cancellation of the partially suspended page except the portions thereof under suspension. Such page cancellation shall be set forth in substantially the manner shown in the following example:

2nd Revised Page 10

cancels

1st Revised Page 10 (except portions under suspension in C.A.B. Docket No. ——)

(3) If the suspension has continued in effect tariff provisions on preceding issues of the page, the reissue of the page suspended in part shall bring forward without change those tariff provisions which were continued in effect by the suspension. In such cases, such reissue shall, in addition to directing the page cancellation required by paragraph (a)(2) of this section, complete the cancellation of the page which contained the matter continued in effect by the suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

2nd Revised Page 10

cancels

1st Revised Page 10 (except portions under suspension in C.A.B. Docket No. ——) and completes the cancellation of Original Page 10

All subsequent revisions of the same page, which are issued after such reissue and which become effective during the period of suspension, shall bring forward unchanged the tariff provisions continued in effect by the suspension and shall bear reference to the revision containing the suspended matter. Such reference shall be set forth immediately below the page number and cancellation in the manner shown in the following example:

3rd Revised Page 10

cancels

2nd Revised Page 10

(1st Revised Page 10 contains portions under suspension in C.A.B. Docket No. —)

(b) *Reissuing a loose-leaf page continued in effect by suspension of entire revised page.* When the Board has suspended a revised page in its entirety and the prior revision (which is continued in effect by such suspension) is to be reissued, the reissue shall conform with the following requirements:

(1) The revised page (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The revised page (reissue) shall bring forward without change those tariff provisions which are continued in effect by the suspension and shall cancel the page containing such provisions.

(3) The revised page (reissue) shall not direct any cancellation of the suspended page but shall contain a statement that such page is under suspension which shall be set forth (immediately below the page number and page cancellation) in the manner shown in the following example:

3rd Revised Page 10

cancels

1st Revised Page 10

(2nd Revised Page 10 is under suspension in C.A.B. Docket No. —)

All subsequent revisions of the same page, which are issued after such reissues and which become effective during the period of suspension, shall bring forward unchanged the tariff provisions continued in effect by the suspension and shall bear reference to the suspended revision to be set forth in the manner shown in the above example.

(c) *Supplement suspended in part.* When a supplement suspended in part is reissued, the reissue of such supplement shall conform to the following requirements:

(1) The supplement (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The supplement (reissue) shall direct the cancellation of the partially suspended supplement except the portions thereof under suspension. Such supplement cancellation shall be set forth in the upper right-hand corner of the title page of the reissue in substantially the manner shown in the following example:

Supplement No. 4

to

C.A.B. No. 2

(Cancels Supplement No. 2 except portions under suspension in C.A.B. Docket No. —)

Supplements Nos. *2, 3, and 4 are the only effective supplements.

*—Contains only matter suspended in C.A.B. Docket No. —.

(3) If the suspension has continued in effect tariff provisions in a prior supplement which is indicated as canceled by the partially suspended supplement, except as to the provisions continued in effect by the suspension, the reissue of the partially suspended supplement shall bring forward unchanged the matter continued in effect by the suspension and the title page of such reissue shall, in addition to directing the supplement cancellation, complete the cancellation of the supplement containing the matter continued in effect by the suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

Supplement No. 4

to

C.A.B. No. 1

(Cancels Supplement No. 2 except portions under suspension in C.A.B. Docket No. —, and completes the cancellation of Supplement No. 1)

Supplements Nos. *2, 3, and 4 are the only effective supplements.

*—contains only matter suspended in C.A.B. Docket No. —.

(d) *Tariff suspended in part.* When a tariff suspended in part (including a tariff having a supplement suspended wholly or in part) is reissued, the reissue of such tariff shall conform to the following requirements:

(1) The tariff (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The tariff (reissue) shall direct the cancellation of the partially suspended tariff except the portions thereof under suspension. Such tariff cancellation shall be set forth (in the upper right-hand corner of title page of the reissue) in substantially the manner shown in the following example:

C.A.B. No. 3

cancels

C.A.B. No. 2 (except portions under suspension in C.A.B. Docket No. —)

(3) If the suspension has continued in effect tariff provisions which are published in the tariff containing the suspended matter, the reissue of such tariff shall bring forward such effective tariff provisions without change.

(4) If the tariff containing the suspended matter has canceled a preceding issue except provisions in such preceding issue which are continued in effect by reason of the suspension, the reissue of the partially suspended tariff shall, in addition to directing the cancellation required by paragraph (d)(2) of this section, complete the cancellation of the tariff containing the provisions continued in effect by the suspension, and shall bring forward such provisions without change. Such tariff cancellation shall be set forth (in upper right-hand corner of title page of the reissue) in substantially the manner shown in the following example:

C.A.B. No. 3

cancels

C.A.B. No. 2 (except portions under suspension in C.A.B. Docket No. —) and completes the cancellation of C.A.B. No. 1

(e) *Item, rule, or similar unit suspended in part.* When a numbered item, rule, or similar unit in a book tariff or supplement thereto is suspended in part, a reissue of such item, rule, or similar unit shall conform to the following requirements:

(1) The reissue shall not reproduce or bring forward the matter under suspension.

(2) The reissue shall direct the cancellation of the partially suspended item rule, or similar unit except the portions thereof under suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

Item No. 10-B

cancels

Item No. 10-A (except portions under suspension in C.A.B. Docket No. —)

(3) If the suspension has continued in effect tariff provisions in preceding issues of the partially suspended item, rule, or similar unit, the reissue of the partially suspended item, rule, or similar unit shall bring forward without change the tariff provisions which were continued in effect by the suspension. In such cases, such reissue shall, in addition to directing the cancellation required by paragraph (e)(2) of this section, complete the cancellation of the item, rule, or similar unit which contained the matter continued in effect by the suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

Item No. 10-B

cancels

Item No. 10-A (except portions under suspension in C.A.B. Docket No. —) and completes the cancellation of Item No. 10

§ 221.123 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

Subpart J—Vacating the Suspension of Tariff Matter

§ 221.130 Tariff must be amended to make suspended matter effective.

(a) When the Board vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Board vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date without filing a vacating supplement as required by this subpart.

§ 221.131 Vacating supplement.

(a) Subject to §§ 221.132 and 221.133, the tariff, supplement, page, item, rule, fare, rate, or other tariff provision whose suspension has been vacated by an order of the Board may be made effective prior to the termination of the suspension period only by issuing and filing to the tariff containing the suspended matter a supplement (referred to in this subpart as a vacating supplement) which shall conform with the following requirements:

(1) Such vacating supplement shall be issued on not less than one day's notice unless otherwise provided by the Board's vacating order.

(2) Such vacating supplement may be filed to a loose-leaf tariff as well as a book tariff.

(3) Such vacating supplement shall contain a vacating notice which shall specify the tariff matter whose suspension is vacated and shall state the specific date on which such matter will become effective. Such date shall be the same effective date as the effective date of the vacating supplement and must be earlier than the date to which the tariff matter was suspended. The vacating notice shall be published on the title page of the supplement (immediately below the description of contents and territory) or at the top of the next page.

(4) Such vacating supplement shall direct the cancellation of the suspension supplement if all suspended matter covered by the suspension supplement is being vacated.

(5) Such vacating supplement shall contain no tariff provisions other than those specifically authorized to be included therein by this section and § 221.132, and those required by other regulatory bodies.

(6) The title page of such vacating supplement shall contain reference to this subpart and to the Board's vacating order to be shown immediately above the issued and effective dates in the following manner:

Issued under authority of Subpart J, Part 221 of the Economic Regulations and Order No. —— in Docket No. —— of the Civil Aeronautics Board.

§ 221.132 When tariff amendments in addition to vacating supplement are required.

(a) *Notice and effective date.* All amendments made pursuant to this section shall be filed on not less than one day's notice, unless otherwise provided by the Board's vacating order, and shall bear the same effective date as the effective date of the vacating supplement filed pursuant to § 221.131, except as otherwise provided in paragraph (h) of this section, and except that the effective date of any tariff provisions other than the vacated matter shall not be advanced under this authority. All tariff amendments made pursuant to this section which are not published in the vacating supplement shall bear the reference required by § 221.131(a)(6).

(b) *When a loose-leaf page suspended in part has been reissued.* When a loose-leaf page is suspended in part and such suspension is vacated in its entirety by the Board but, prior to such vacating of the suspension, the page has been canceled (except as to matter under suspension) by a subsequent revision of that page, the following tariff amendments shall be made in addition to issuing and filing a vacating supplement pursuant to § 221.131:

(1) A consecutive revision in the series of the page containing the sus-

pended matter shall be issued which shall (i) republish the suspended matter without change, (ii) cancel the matter continued in effect by the suspension (if published on the preceding revisions of the page) and (iii) complete the cancellation of the page which contained the suspended matter. The latter cancellation shall be set forth (below the C.A.B. and page numbers in the upper right-hand corner of the page) in the manner shown in the following example:

3rd Revised Page 20
cancels
2nd Revised Page 20
(and completes the cancellation of 1st Revised Page 20)

In the above example, the 3rd revision (filed pursuant to this paragraph) cancels the 2nd revision and completes the cancellation of the 1st revision (which was previously canceled by the 2nd revision except as to the suspended matter).

(c) *When a loose-leaf page continued in effect by suspension of entire revised page has been reissued.* When an entire revised page has been suspended and the Board fully vacates such suspension but prior to such vacating of the suspension, the page continued in effect by such suspension has been revised, the following tariff amendments shall be made in addition to issuing and filing the vacating supplement pursuant to § 221.131:

(1) A consecutive revision in the series of the suspended page shall be issued and filed which shall (i) republish the suspended tariff provisions without change, (ii) cancel the reissue of the tariff provisions which were continued in effect by the suspension, and (iii) include the cancellation of the revised page whose suspension has been vacated.

(d) *When provisions continued in effect by suspension of supplement (in full or part) have been reissued in a supplement.* When the Board has suspended in full or in part, a supplement to a book tariff and such suspension is vacated by the Board but (prior to such vacating of the suspension) all or part of the provisions which were continued in effect by the suspension have been reissued in a subsequent supplement to the same tariff, the vacating supplement shall include the following amendments:

(1) The vacating supplement shall cancel such reissue of the provisions continued in effect by the suspension.

(2) The vacating supplement shall republish without change the respective suspended provisions which are to supersede the provisions canceled pursuant to paragraph (d)(1) of this section and shall cancel such suspended provisions from the supplement which was under suspension.

(e) *When partially suspended item, rule, or similar unit in a book tariff or supplement has been reissued in a supplement.* When the Board has suspended, in part, a numbered item, rule, or similar unit in a book tariff or supplement and such suspension is fully vacated by the Board but (prior to such vacating of the suspension) the partially suspended item, rule, or similar unit has been canceled except as to the suspended matter by a subsequent issue of such item, rule, or unit, the vacating supplement shall amend such items, rules, or similar units as specified below:

(1) The tariff provisions whose suspension is vacated shall be republished without change.

(2) The tariff provisions which were continued in effect by such suspension shall be canceled.

(3) The cancellation of the partially suspended item, rule, or similar unit shall be completed in the manner shown in the following example:

Item No. 10-C
cancels
Item No. 10-B
(and completes the cancellation of Item No. 10-A)

In the above example, Item No. 10-C in the vacating supplement directs the cancellation of the current Item No. 10-B and completes the cancellation of Item No. 10-A (which has been previously canceled by Item No. 10-B except as to the suspended matter).

(f) *When tariff continued in effect by suspension has been amended by supplement or loose-leaf page.* When the

Board fully vacates the suspension of an entire tariff but, prior to such action, the tariff which was continued in effect by the suspension has been amended by supplement or loose-leaf page, the following tariff amendments shall be made in addition to issuing and filing the vacating supplement pursuant to § 221.131:

(1) If the suspended tariff is a book tariff, the vacating supplement issued to such tariff shall set forth as reissued matter (without change) any changes or additions which were lawfully published in the tariff continued in effect by the suspension but which are not included in the suspended tariff.

(2) If the suspended tariff is a loose-leaf tariff loose-leaf pages shall be issued thereto and such pages shall set forth as reissued matter (without change) any changes or additions which were lawfully published in the tariff continued in effect by the suspension but which are not included in the suspended tariff.

(g) *When tariff continued in effect by suspension has been reissued.* When the Board fully vacates the suspension of an entire tariff but, prior to such action, the tariff which was continued in effect by such suspension has been reissued, the following tariff amendments shall be made in addition to filing the vacating supplement pursuant to § 221.131:

(1) A supplement shall be issued and filed to the tariff containing the reissued tariff provisions which were continued in effect by the suspension and such supplement shall cancel that tariff in its entirety.

(2) Any changes or additions which have been lawfully published in the tariff specified in paragraph (g)(1) of this section but which are not included in the suspended tariff shall be republished:

(i) As reissued matter (without change) in the vacating supplement issued to the suspended tariff if the latter is a book tariff, or

(ii) As reissued matter (without change) in revised pages or additional original pages issued to the suspended tariff if the latter is a loose-leaf tariff.

(h) *When a tariff suspended in part has been reissued.* When a tariff has been suspended in part (or has a supplement suspended in full or in part) and the Board fully vacates such suspension but, prior to the vacating of the suspension, a new tariff has been issued which directs the cancellation of the partially suspended tariff (except as to the suspended provisions), the following tariff amendments are required in order to make the suspended tariff provisions effective under authority of the Board's vacating order:

(1) When the suspended tariff provisions are to be made effective prior to the effective date of such new tariff, a vacating supplement shall be issued and filed to the partially suspended tariff together with any amendments required by other paragraphs of this section. Also, the new tariff shall be amended in the manner prescribed by § 221.110 for the purpose of establishing the following amendments effective on the effective date of the new tariff:

(i) The tariff cancellation shown on the title page of the new tariff shall be amended so that it fully cancels the former tariff by C.A.B. number instead of canceling it "except portions under suspension in C.A.B. Docket No. ——".

(ii) The tariff provisions whose suspension has been vacated in the former tariff shall be republished without change in the new tariff.

(iii) The reissue of the tariff provisions which were continued in effect by the suspension shall be cancelled from the new tariff.

(2) When the suspended tariff provisions are to be made effective on or after the effective date of such new tariff, a vacating supplement shall not be issued to the partially suspended tariff but a supplement shall be issued and filed to such tariff which shall cancel the suspended provisions, refer to such provisions as republished in the new tariff, and complete the cancellation of the tariff. The latter cancellation shall be set forth in the upper right corner of the supplement's title page (below the supplement and C.A.B. numbers) in the manner shown in the following example:

Supplement No. 3

to

C.A.B. No. 6

(completes the cancellation of C.A.B. No. 6)

Also, the new tariff shall be amended simultaneously in the manner prescribed by § 221.110 for the purpose of accomplishing the following amendments:

(i) The tariff provisions in the former tariff whose suspension has been vacated by the Board shall be republished without change in the new tariff.

(ii) The reissue of the tariff provisions which were continued in effect by such suspension shall be canceled from the new tariff.

§ 221.133 When Special Tariff Permission is required to file amendments making suspended matter effective pursuant to vacating order.

When tariff provisions continued in effect by a suspension have been reissued prior to the Board's vacating the suspension and § 221.132 does not authorize the amendments necessary to cancel such provisions in order to prevent a conflict with the tariff provisions whose suspension is being vacated, a vacating supplement shall not be issued and filed. In such circumstances, the issuing agent or carrier shall file an application for Special Tariff Permission specifically setting forth the amendments which are proposed to be issued and filed on one day's notice (unless the Board's vacating order provides otherwise) for the purpose of making the suspended matter effective and canceling the reissue of the tariff provisions continued in effect by the suspension. Upon approval of such application, the issuing agent or carrier shall then file the amendments authorized thereunder.

Subpart K—Canceling Suspended Matter in Compliance With Board's Order

§ 221.140 Notice required when canceling suspended matter in compliance with Board's order.

When the Board orders the cancellation shall be filed on not less than one other tariff provisions theretofore suspended by the Board, the tariff amendments which accomplish such cancellation of rates, fares, charges, rules, or day's notice to the Board and the public unless otherwise provided by the Board's order. The tariff amendments which accomplish such cancellation of suspended matter shall bear reference to this subpart and the Board's order in the following manner:

Issued in compliance with Subpart K of Economic regulations and Order No. —in Docket No. — of the Civil Aeronautics Board.

§ 221.141 Cancellation of suspended matter subsequent to date to which suspended.

(a) *Endeavor to cancel prior to expiration of suspension period.* When an order of the Board requires the cancellation of tariff provisions which were suspended by the Board and such cancellation is required to be made effective on or before a date which is subsequent to the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) *When necessary to republish matter continued in effect by suspension.* If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing agent or carrier shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Board's order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Board's order in the manner shown in § 221.140.

Subpart L—Index of Tariffs

§ 221.150 When index required.

Each carrier shall issue, post, and file individually or by a duly appointed agent an index of the tariffs which have been filed with the Board by such carrier or for its account when:

(a) The carrier has ten or more tariffs which it has issued and filed in its own name with the Board and such tariffs are either effective or are to become effective, or

(b) The carrier is shown as a participating carrier under authority of its power of attorney or concurrence in three or more tariffs issued by agents or other carriers, and such participation is either effective or is filed to become effective.

§ 221.151 Index to be issued and filed as a tariff.

The index of tariffs required by this subpart shall bear a consecutive C.A.B. number in the tariff series of the issuing carrier or agent and shall be prepared, posted, filed, and amended in the form and manner prescribed for a tariff except:

(a) Such index of tariffs shall contain only the following contents:

(1) Title page.

(2) Correction number check sheet if index is in loose-leaf form.

(3) Explanations of abbreviations, reference marks, and symbols.

(4) A list of tariffs on file with the Board which are in effect or are to become effective and which the carrier has issued in its own name or in which the carrier is shown as a participating carrier.

(b) Such index of tariffs shall be issued in the name of and filed by the carrier for whom it is published and, except as provided in paragraph (c) of this section, shall not be issued and filed by the carrier's agent.

(c) An agent may publish an index of tariffs, and the regulations relating to powers of attorney will not apply: *Provided*, That the agency index contains a complete alphabetical index of carriers and that each carrier electing to publish its index in an agency issue shall inform the Board by letter as to what agency issue will include its index of tariffs. Also, any such carrier which changes its method of publishing the tariff index from individual carrier index to agency index or from agency index to individual carrier index or from one agent to another shall notify the Board by letter. The arrangement and information required by §§ 221.152 and 221.153 shall be observed in connection with each participant in an agency issue.

(d) Such index of tariffs (including supplements or loose-leaf pages issued thereto) shall bear an issued date but shall not bear an effective date. Such index of tariffs (including supplements or loose-leaf pages issued thereto) shall be transmitted to the Board promptly upon issuance. The requirement that tariff publications shall be filed on thirty days' notice is not applicable to such index of tariffs (including amendments thereof).

(e) Such index of tariffs shall list both passenger tariffs and property tariffs and each carrier may have only one effective index of tariffs.

(f) The title page of an index issued by a carrier shall contain the following statement (below the title of the index):

THIS INDEX CONTAINS A LIST OF
TARIFFS ISSUED BY OR ON BEHALF
OF

(Show issuing carrier's name)

(If an agency tariff, an agent must show participating carriers on the title page or make reference thereon to the list of participants named therein.)

§ 221.152 Arrangement of lists of tariffs.

When the carrier issuing the index of tariffs required by this subpart issues or participates in both passenger tariffs and property tariffs, the list of tariffs in such carrier's index may be divided into two sections; the first section shall list the passenger tariffs only and the second section shall list the property tariffs only. When the carrier issues or participates in either passenger tariffs or property tariffs (but not both), all tariffs shall be listed in one section. The tariffs listed shall be shown in the following order in each section:

(a) The tariffs issued in the name of and by the carrier issuing the index (listed in numerical order by C.A.B. number),

(b) The tariffs issued in the name of and by an agent or agents and in which the carrier (issuing the index) is shown as a participating carrier under authority of its power of attorney (the names of the agents shall be listed alphabetically and each agent's tariffs shall be listed numerically by C.A.B. number under that agent's name),

(c) The tariffs issued by other carriers and in which the carrier (issuing the index) is shown as a participating carrier under authority of its concurrence (the names of the carriers issuing such tariffs shall be listed alphabetically and the tariffs of each such carrier shall be listed in numerical order by C.A.B. number under the carrier's name).

§ 221.153 Information to be shown in list of tariffs.

The index of tariffs required by this subpart shall show the following information for each tariff listed therein (preferably in tabular form):

(a) Name of issuing carrier or agent.

(b) C.A.B. number.

(c) C.A.B. number of tariff cancelled by tariff listed.

(d) General effective date.

(e) Title of tariff.

(f) Description of rates, fares or other contents of tariff (as shown on its title page).

(g) Where tariff applies from (as shown on its title page).

(h) Where tariff applies to (as shown on its title page).

When supplements or loose-leaf pages are issued to a tariff after it has been filed with the Board which result in the information in the index of tariffs becoming inaccurate, such index shall be amended to reflect the correct information.

§ 221.154 Index to be maintained current.

Additions, changes, or cancellations in an index of tariffs required by this part shall be made by reissue or amendment quarterly.

Subpart M—Filing Tariff Publications With Board

§ 221.160 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Board or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they effect any changes:

(1) At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 1002(d)(4) of the Act (interstate and overseas) or the zone created by section 1002(j)(6) (foreign), or stating a rule that affects only such a fare;

(2) At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in § 221.165(d)(1)(iv); and

(3) At least 60 days before they are to become effective, for all other tariffs.

(b) *When single publication contains changes effective on different dates.* Each tariff, supplement, or loose-leaf tariff page which contains various changes to become effective on different dates shall:

(1) Bear a general effective date which shall allow at least thirty days' notice,

(2) Show directly in connection with such general effective date the following notation: "(except as noted)",

(3) Show in connection with each change which is to become effective earlier or later than such general effective date, its specific effective date which shall allow at least thirty days' notice unless the Board authorizes the change to be filed on less notice.

(4) When matter is authorized by the Board to be filed on less than thirty days' notice, show reference to the Board's order, regulation, or special tariff permission authorizing such filing. Such reference shall be shown (immediately following the specific effective date of such matter) in the manner required by the order, regulation, or special tariff permission, for example:

> Effective: ———. Issued on ———days' notice under Special Tariff Permission No. ——— of the Civil Aeronautics Board. (See also § 221.194.)

(c) *Computing number of days' notice.* A tariff publication shall be deemed to be filed only upon its actual receipt by the Board, and the first day of any required period of notice shall be the day of actual receipt by the Board.

(d) *Issued date.* All tariff publications must be received by the Board on or before the designated issued date.

(Approved by the Office of Management and Budget under control number 3024-0038)

(Secs. 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C. 1324, 1373, 1482, as amended)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1322, Jan. 9, 1978; ER-1044, 44 FR 9577, Feb. 13, 1979; ER-1171, 45 FR 20064, Mar. 27, 1980; ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.161 Delivering tariff publications to Board.

Tariff publications will be received for filing only by delivery thereof to the Board through normal mail channels, or by delivery thereof directly to that office of the Board charged with the responsibility of maintaining the Board's official file of tariffs. Tariff publications will be received for filing only during the established business hours of the Board. The office of the Board is closed on Saturdays and Sundays and on the following holidays:

New Year's Day (January 1).
Inauguration Day (January 20, 1973, and January 20 of each fourth year thereafter).
Washington's Birthday (third Monday in February).
Memorial Day (last Monday in May).
Independence Day (July 4).
Labor Day (first Monday in September).
Columbus Day (second Monday in October).
Veterans Day (November 11).
Thanksgiving Day (fourth Thursday in November).
Christmas (December 25).

When any such holiday falls on Saturday, the office of the Board will be closed on the preceding Friday. When any such holiday falls on Sunday, the office of the Board will be closed on the following Monday. No tariff publication will be accepted by the Board unless it is delivered to the Board free from all charges, including claims for postage.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-670, 36 FR 4538, Mar. 9, 1971; ER-1079, 43 FR 52697, Nov. 14, 1978]

§ 221.162 Number of copies required.

Three copies of each tariff, supplement, loose-leaf tariff page, index of tariffs, and adoption notice to be filed shall be sent to the Civil Aeronautics Board, Tariffs Section, Washington, D.C., 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal (§ 221.163).

§ 221.163 Letter of tariff transmittal.

All tariff publications (including indexes of tariffs and adoption notices) filed with the Board shall be accompanied by a letter of tariff transmittal in duplicate in the form prescribed in § 221.240. Each letter of transmittal may include one or more tariff publications but passenger tariff publications shall not be included in the same letter of tariff transmittal with property tariff publications. If the filing carrier or agent desires a receipt for the filing, the letter of tariff transmittal shall be sent in triplicate (accompanied by a preaddressed postage paid return envelope, if return by mail is requested), and one copy thereof showing the date of receipt by the Board will be returned to the sender.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-874, 39 FR 34514, Sept. 26, 1974, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.164 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff publication is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Board, be transmitted with such tariff publication submitted for filing and shall be listed in the letter of tariff transmittal.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.165 Explanation and data supporting tariff changes and new matter in tariff publications.

When a tariff publication is filed with the Board which contains new or changed local or joint rates, fares, or charges for air transportation, or new or changed classifications, rules, regulations, or practices affecting such rates, fares, or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such publication, in or attached to the transmittal letter:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff publication is filed pursuant to an intercarrier agreement approved by the Board, the explanation shall identify such agreement by CAB agreement number, IATA, or ATC resolution number, or if none is designated, then by other definite identification. Where a tariff publication is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the letter of tariff transmittal.

(b) Economic data and/or information in support of the new or changed matter, including, in cases where pertinent,

(1) Estimates of costs of service, with supporting details and references to sources, and

(2) Estimates of the aggregate effect of the new or changed matter upon such carrier's traffic, schedules, and revenues, and an explanation of the basis for the estimates (including, where available, data as to past traffic, schedules and revenues).

(c) In cases where such publication contains new or changed local or joint rates (other than charter rates), fares, or charges (whether such rates, fares, or charges are published specifically or by rule), a table prepared as follows:

(1) In the first column, a sample of the pairs of points between which such new or changed rates, fares, or charges apply, which sample shall contain every 10th pair of all such pairs (but not less than 10 pairs, unless such new or changed rates, fares, or charges apply between fewer than 10 pairs of points, in which event all such pairs shall be included), but need not include more than 75 pairs of points, for each new or changed type of rate, fare (e.g., first class, coach, etc.), or charge included in such publication;[5]

(2) In the second column, the existing rates, fares, or charges canceled or superseded by the new or changed rates, fares, or charges, except in cases where the publication contains new rates, fares, or charges which do not cancel or supersede existing rates, fares, or charges, in which event the second column shall contain those rates, fares, or charges upon which the filing air carrier relies for comparison[6] in evaluating such new rates, fares, or charges;

(3) In the third column, the new or changed rates, fares, or charges;

(4) In the fourth column, the differences between the rates, fares, or charges listed in the second and third columns, expressed as percentages of those listed in the second column;

(5) In the fifth column, the existing fares per mile or rates or charges per ton-mile;

(6) In the sixth column, the new or changed fares per mile, or rates or charges per ton-mile; and

(7) In the seventh column, the airport-to-airport mileage[7] used in com-

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[5] If a carrier's freight rates are published in rate scales rather than on a point-to-point basis, the table shall contain a representative sample of the proposed rates and charges for each rate scale, which sample shall contain 10 percent of all rates or charges, but not less than 10 rates or charges unless such new or changed rates or charges are less than 10, in which event all such rates or charges shall be included: *Provided, however,* That the sample need not include more than a total of 75 representative rates and charges for each new or changed type of rate or charge (e.g., general commodity or specific commodity) included in such publication.

[6] Identify as, e.g., jet coach fare, general commodity rate, etc. If reliance is placed upon rates, fares, or charges for different pairs of points than shown in the first column, such points should be indicated by footnote.

[7] The direct airport-to-airport mileage between the points shown in the first column

Continued

puting the fares per mile or rates or charges per ton-mile.

(d) Exceptions: (1) The requirement for data and/or information in paragraphs (b) and (c) of this section will not apply to tariff publications containing new or changed matter which are filed.

(i) In response to Board orders or specific policy pronouncements of the Board directly related to such new or changed matter.

(ii) Pursuant to an intercarrier agreement approved by the Board prescribing the rates, fares, charges (or specific formulas therefor) or other matter,

(iii) For the interstate air transportation of property, as defined in § 1002(k)(1) of the Act, or by air freight forwarders or international air freight forwarders, as defined in Part 296 of this subchapter, or

(iv) To meet competition: *Provided*, That

(*a*) Changed matter will be deemed to have been filed to meet competition only when it effects decreases in rates, fares, or charges and/or increases the value of service so that the level of the rates or fares or charges and the services provided will be substantially similar to the level of rates or fares or charges and the services of a competing carrier or carriers.

(*b*) New matter will be deemed to have been filed to meet competition only when it establishes or effects a rate, fare, or charge and a service which will be substantially similar to the rates, fares, or charges and the services of a competing carrier or carriers.

(*c*) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (d)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(*d*) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, in or attached to the transmittal letter, the complete tariff references which will serve to identify the competing tariff matter which the tariff publication purports to meet. In such case the transmittal letter or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) The requirement for data and/or information in paragraph (b) of this section will not apply to foreign air carriers.

(3) The requirement for information in paragraph (c) of this section will not apply to tariff publications containing new or changed rates, fares or charges which result from (i) uniform percentage adjustments, (ii) specific increment adjustments, or (iii) cancellation of rates, fares or charges.

(4) The requirement for data and/or information in paragraph (b) of this section shall not apply to:

(i) Fares for scheduled passenger service that are within a statutory or Board-established zone of fare flexibility; and

(ii) Rates for cargo service in foreign air transportation that are within the rate flexibility zones set forth in § 399.41 of this chapter, except as specifically required by the Board.

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shall normally be used for purposes of this table. Where points with multiple airports are involved, show the mileage to/from the principal airport with respect to the related service. Other than direct mileages may be used where appropriate (e.g., where the filing carrier is not authorized to provide direct service, or where a joint fare involves a circuitous routing via a junction point). In all instances where a mileage other than the direct airport-to-airport mileage is used, show the points by which it is computed and the reason for its use.

(Approved by the Office of Management and Budget under control number 3024-0038)

(Sec. 102, 72 Stat. 740 (49 U.S.C. 1302); National Environmental Policy Act of 1969 (Pub. L. 91-90, 42 U.S.C. 4321 *et seq.*) and E. O. 11514)

[ER-493, 32 FR 7453, May 19, 1967, as amended by ER-760, 37 FR 19804, Sept. 22, 1972; ER-796, 38 FR 10256, Apr. 26, 1973; ER-927, 40 FR 37183, Aug. 25, 1975; ER-1061, 43 FR 34118, Aug. 3, 1978; ER-1271, 46 FR 63218, Dec. 31, 1981; ER-1322, 48 FR 4270, Jan. 31, 1983]

§ 221.166 Explanation of missing C.A.B. numbers to accompany tariff transmittal.

Section 221.31(a) requires a carrier or agent to file tariffs under consecutive C.A.B. numbers. However, the Board may accept a tariff bearing a C.A.B. number which is not consecutive and results in an unused C.A.B. number intervening since the last previously filed tariff: *Provided*, That a letter accompanies the tariff transmittal explaining why the C.A.B. number of the tariff is not consecutive to the last previously filed tariff and stating whether or not the missing C.A.B. number will be used on a future tariff.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9480, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.167 Posting copies to be furnished participating carriers at time of filing.

At the same time that a tariff publication is transmitted to the Board for filing, the issuing carrier or agent shall send sufficient copies of the tariff publication for posting purposes to all participating carriers (see Subpart N).

§ 221.168 Withdrawal or substitution of filed tariff publications prohibited.

A tariff publication filed with the Board will not be surrendered or returned and no substitution thereof will be permitted.

Subpart N—Posting Tariff Publications for Public Inspection

§ 221.170 [Reserved]

§ 221.171 Posting at stations, offices, or locations other than principal or general office.

(a) Each carrier shall post and make available for public inspection at each of its stations, offices, or other locations which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, currently effective tariffs and tariff publications which have been issued but are not yet effective, to which it is a party, as follows:

(1) At stations, offices, or locations at which tickets for passenger transportation are sold, all tariff publications applicable to passenger traffic from or to the point where such station, office, or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to passenger traffic from or to such point.

(2) At stations, offices, or locations at which property is handled, received, and delivered for transportation, all tariff publications applicable to cargo traffic from or to the point where such station, office or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to cargo traffic transported from or to such point.

(b) A carrier will be deemed to have complied with the requirement that it "post" tariffs, if it maintains at each station, office, or location a file in complete form of all tariff publications required to be posted; and in the case of tariffs involving passenger fares, rules, charges or practices, notice to the passenger as required in §§ 221.174 and 221.175.

(c) Tariff publications shall be posted by each carrier party thereto no later than the issued date designated thereon except that in the case of carrier stations, offices of locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the issued date, and and except that a tariff publication which the Board has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

(Secs. 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C. 1324, 1373, 1482, as amended)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1104, 44 FR 9578, Feb. 13, 1979]

§ 221.172 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.173 Notice of tariff posting.

Each carrier shall cause to be displayed continuously in a conspicuous public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

PUBLIC INSPECTION OF TARIFFS

All the currently effective passenger (and/or cargo as applicable) tariffs to which this company is a party and all passenger (and/or cargo as applicable) tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to ———. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, including canceled tariffs, with indexes thereof, is maintained and kept available for public inspection at ———. (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

§ 221.174 Notification to the passenger of status of fare, rule, charge or practice.

A carrier or ticket agent shall print, stamp upon, or affix to every purchased passenger ticket a notice stating that the price of the ticket is subject to adjustment prior to the commencement of transportation, except that such notice is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the price of such ticket is not subject to any future adjustment during the validity of the ticket or the ticket is sold for transportation commencing on the same day.

§ 221.175 Special notice of limited liability for death or injury under the Warsaw Convention.

(a) In addition to the aforesaid requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATIONS OF LIABILITY

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(1) Each ticket; (2) a piece of paper either placed in the ticket envelope

with the ticket or attached to the ticket; or (3) the ticket envelope; *And provided further,* That a carrier which has heretofore been furnishing a statement including either the sum of "$8,290" or the sum of "$9,000," in place of the sum of "$10,000" in the text of the statement prescribed by this paragraph, may continue to use such statement until July 15, 1974.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section: *Provided, however,* That an air carrier, except an air taxi operator subject to Part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.176(a) of this chapter in full compliance with the posting requirements of this paragraph. *And provided further,* That an air taxi operator subject to Part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed above in full compliance with the posting requirements of this paragraph.

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATION OF LIABILITY

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

Such statements shall be printed in bold faced type at least one-fourth of an inch high.

(Sec. 402, 72 Stat. 757; 49 U.S.C. 1372)

[ER-708, 36 FR 22229, Nov. 23, 1971, as amended by ER-837, 39 FR 8319, Mar. 5, 1974; ER-844, 39 FR 16120, May 7, 1974]

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

NOTICE OF LIMITED LIABILITY FOR BAGGAGE

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.175(b):

ADVICE TO PASSENGERS ON LIMITATIONS OF LIABILITY

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

Provided, however, That carriers may include in the notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on or with each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10 point type:

NOTICE OF BAGGAGE LIABILITY LIMITATIONS

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

Provided, however, That carriers may include in their ticket notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel.

(c) It shall be the responsibility of each carrier to insure that travel agents authorized to sell air transportation for such carrier comply with the notice provisions of paragraphs (a) and (b), of this section.

(d) Any air carrier or foreign air carrier subject to the provisions of this section which wishes to use a notice of limited liability for baggage of its own wording, but containing the substance of the language prescribed in paragraphs (a) and (b) of this section may substitute a notice of its own wording upon approval by the Board.

(e) The requirements as to time and method of delivery of the notice (including the size of type) specified in paragraphs (a) and (b) of this section and the requirement with respect to travel agents specified in paragraph (c) may be waived by the Board upon application and showing by the carrier that special and unusual circumstances render the enforcement of the regulations impractical and unduly burdensome and that adequate alternative means of giving notice are employed.

(f) Applications for relief under paragraphs (d) and (e) of this section shall be filed with the Board (Attention: Assistant Director, Bureau of Pricing and Domestic Aviation, Legal Analysis Division) not later than 15 days before the date on which such relief is requested to become effective.

(g) Notwithstanding any other provisions of this section, no air taxi operator subject to Part 298 of this subchapter shall be required to give the notices prescribed in this section, either in its capacity as an air carrier or in its capacity as an agent for an air carrier or foreign air carrier.

[ER-708, 36 FR 22229, Nov. 23, 1971, as amended by ER-995, 42 FR 20459, Apr. 20, 1977; ER-1119, 44 FR 25627, May 2, 1979; ER-1310, 48 FR 227, Jan. 4, 1983; 48 FR 3585, Jan. 26, 1983; ER-1390, 49 FR 40005, Oct. 12, 1984]

§§ 221.177—221.178 [Reserved]

§ 221.179 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section separately for its passenger tariffs and its freight tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff, supplement, and loose-leaf page, including the justification required by § 221.165, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Board. The subscription service described herein shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: *Provided*, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-1001, 42 FR 28877, June 6, 1977, as amended by ER-1125, 44 FR 33059, June 8, 1979]

Subpart O—Rejection of Tariff Publications

§ 221.180 Board's authority to reject.

Under the terms of section 403(a) of the act, the Board is empowered to reject any tariff publication which is not consistent with section 403 of the act or with the regulations in this part.

§ 221.181 Notification of rejection.

When a tariff publication is rejected, the issuing carrier or agent thereof will be notified in writing that the publication is rejected and of the reason for such rejection. The rejected publication will not be returned to the issuing carrier or issuing agent.

§ 221.182 Rejected publication is void and must not be used.

A tariff publication rejected by the Board is void and is without any force or effect whatsoever. Such rejected tariff publication must not be used.

§ 221.183 Tariff publication issued in lieu of rejected publication.

When a publication is rejected by the Board, the number which it bears must not be again used. Such publication must not thereafter be referred to as canceled or amended but a publication that is issued in lieu of such rejected publication shall bear the following notation (to be shown in the manner described in paragraphs (a), (b), and (c) of this section):

(Issued in lieu of —————— rejected by C.A.B.) (Show number of rejected publication)

(a) If the rejected publication is a tariff, the tariff which is issued in lieu thereof shall show the above required notation under its C.A.B. number on the title page in the manner shown in the following example:

C.A.B. No. 3

(Issued in lieu of C.A.B. No. 2 rejected by C.A.B.)

cancels

C.A.B. No. 1

(b) If the rejected publication is a loose-leaf tariff page, the page which is issued in lieu thereof shall show the required notation under the page number in the manner shown in the following examples:

(1) When new page is issued in lieu of a rejected original page:

1st Revised Page 10

(Issued in lieu of Original Page 10

rejected by C.A.B.)

(2) When new page is issued in lieu of a rejected revised page:

3rd Revised Page 16

(Issued in lieu of 2nd Revised Page 16
rejected by C.A.B.)

cancels

1st Revised Page 16

(c) If the rejected publication is a supplement, the supplement which is issued in lieu thereof shall show the required notation under the supplement number in the manner shown in the following example:

Supplement No. 3 (Issued in lieu of
Supplement No. 2

rejected by C.A.B.) to

C.A.B. No. 1

(Cancels Supplement No. 1)

Supplement No. 3 is the only effective supplement.

§ 221.184 Issue page in lieu of rejected loose-leaf page within 20 days.

If a rejected loose-leaf tariff page is published on the reverse side of another page which has not been rejected, a page shall be issued and filed in lieu of the rejected page within 20 days after the date of the rejection notice, and the page on the reverse side of the rejected page shall be reissued on lawful notice.

Subpart P—Special Tariff Permission To File on Less Than Statutory Notice

§ 221.190 Grounds for approving or denying Special Tariff Permission applications.

(a) *General authority.* The Board is authorized, when actual emergency or real merit is shown, to permit changes in rates, fares, or other tariff provisions on less than the statutory notice required by section 403 of the Act.

(b) *Grounds for approval.* The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) *Clerical or typographical errors.* Clerical or typographical errors in tariff publications constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Board with reasonable promptness after issuance of the defective tariff publication.

(2) *Rejection caused by clerical or typographical errors or illegibility.* Rejection of a tariff publication caused by illegible printing (in matter reissued without change) or by clerical or typographical errors constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected publication, all changes contained in the rejected publication but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Board within five days after receipt of the Board's notice of rejection.

(3) *Incorrect page cancellation caused by rejection of prior issue.* When a revision of a loose-leaf page bears incorrect page cancellation because it was submitted prior to receipt of the notice of rejection of a prior issue of such page, such circumstances constitute grounds for approving an application for Special Tariff Permission to file amendments on less than statutory notice for the purpose of effecting adjustment of the page cancellation and to show "(Issued in lieu of —— rejected by C.A.B.)" to be made effective on the effective date of the revision bearing the incorrect page cancellation.

(4) *Newly authorized transportation.* The fact that the Board has newly authorized a carrier to perform air transportation constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice the fares, rates, and other

tariff provisions covering such newly authorized transportation.

(5) The fact that a passenger fare or cargo rate is within a statutory or Board-established zone of fare or rate flexibility constitutes grounds for approving an application for Special Tariff Permission to file a tariff stating that fare or rate, and any rules affecting it only, on less than statutory notice. The Board's policy on approving such applications is set forth in § 399.35 of this chapter.

(6) *Lowered fares, rates, and charges.* The prospective lowering of fares, rates, or charges to the traveling or shipping public constitutes grounds for approving an application for Special Tariff Permission to file on less than statutory notice a tariff stating the lowered fares, rates, or charges and any rules affecting only them. However, the Board will not approve the application if the proposed tariff raises significant questions of lawfulness, as set forth in § 399.35 of this chapter.

(c) [Reserved]

(d) *Filing notice required by formal order.* When a formal order of the Board requires the filing of tariff matter or publications on a stated number of days' notice, an application for Special Tariff Permission to file on less notice will not be approved. In any such instance a petition for modification of the order should be filed in the formal docket.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978; ER-1171, 45 FR 20064, Mar. 27, 1980; ER-1322, 48 FR 4270, Jan. 31, 1983]

§ 221.191 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Except as set forth in § 221.195, each application for Special Tariff Permission to file a tariff on less than statutory notice shall be prepared in the form prescribed in § 221.241 and shall show all of the information required by that section.

(b) *Number of copies and place of filing.* The original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Civil Aeronautics Board, Tariffs Section, Washington, D.C. 20428.

(c) *Who may make application.* Applications for Special Tariff Permission to file rates, fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff publication. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed rates, fares, or other tariff provisions.

(d) *More than one tariff.* Where the same special circumstances or unusual conditions are relied upon as justifying Special Tariff Permission involving amendments of more than one tariff, the applicant may file one application covering the proposed amendments of all tariffs involved or an individual application for each tariff involved. Since one tariff may present a problem not encountered in the other tariffs, the filing of individual applications may preclude delay in the processing of applications other than the one with respect to the tariff to which the problem pertains. Passenger tariff amendments shall not be included in the same application with property tariff amendments.

(e) *When notice is required.* Notice in the manner set forth in paragraph (f) of this section is required when a carrier files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Board-established zone of fare flexibility or, in markets for which the Board has not established such a zone, outside the statutory zone of fare flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(f) *Form of notice.* When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (e) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Chief of the Tariffs Division, Bureau of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. When notice of an application affecting cargo rates is required by paragraph (e) of this section, the carrier shall give the notice as described in the previous sentence to readily identifiable representatives of affected shippers. The application shall include a list of the parties notified.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978; ER-1171, 45 FR 20064, Mar. 27, 1980; ER-1205, 45 FR 87009, Dec. 31, 1980; ER-1233, 46 FR 35633, July 10, 1981; ER-1271, 46 FR 63218, Dec. 31, 1981; ER-1322, 48 FR 4270, Jan. 31, 1983]

§ 221.192 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file rates, fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with §§ 221.191 and 221.241 in all respects and referring to the previous permission shall be filed.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978]

§ 221.193 Re-use of Special Tariff Permission when publication is rejected.

If a tariff publication containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff publication issued in lieu of such rejected publication provided that such re-use (a) is not precluded by the terms of the Special Tariff Permission, and (b) is made within the time limit thereof or within seven days after the date of the Board's notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

§ 221.194 Reference to Special Tariff Permission on tariff publications.

The terms of Special Tariff Permissions require that tariff publications filed pursuant thereto shall bear reference to the Special Tariff Permission substantially in the following form:

> Issued on —— days' notice under Special Tariff Permission No. —— of the Civil Aeronautics Board.

At the election of the publisher, the Board's Special Tariff Permission number may be omitted from such notation on the tariff publication provided that:

(a) The Special Tariff Permission number is shown in the letter of tariff transmittal in connection with the listed tariff publication containing matter issued under such permission, and

(b) The Special Tariff Permission application number of the issuing carrier or agent is shown in the notation on the tariff publication in the following manner:

> Issued on —— days' notice under Special Tariff Permission of the Civil Aeronautics Board. (Appl. No. ——.)

Publishers should elect to omit the Special Tariff Permission number from the tariff publication only when publication and filing will be expedited since it is preferable that the Special Tariff Permission number be shown on the tariff publication.

§ 221.195 Pre-filing tariff approval for fare reductions.

(a) Carriers obtaining Special Tariff Permission under this section are exempt from section 403 (b) and (c) of the Act to the extent necessary to charge passenger fares approved by the Board under these procedures.

(1) Applications shall be filed with the Chief, Tariffs Division, Bureau of Domestic Aviation, and be entitled "Special Tariff Permission Application No. —Pre-filing Approval Requested." The title page of the application shall include the name and telephone number of the contact person for the carrier.

(2) Applications filed with the Board before 12 noon on any business day will be acted on the same day. Applica-

tions filed with the Board after 12 noon will be acted on by the end of the next business day. The Chief, Tariffs Division, will inform the carrier by telephone as soon as a decision is made on the application.

(3) The new fare may be put into effect by the carrier at 12:01 a.m. on the day following approval of the application.

(4) Within 7 days after approval of any application under this section, the carrier shall file a tariff reflecting the changed fare. The tariff shall show the date on which the fare became effective. A succession of fare changes in acordance with this section may be reflected in a single tariff filing by showing the superseded fares and their effective dates in footnotes.

(b) Applications shall be in easily readable and understandable format.

(1) The application shall describe: (i) the fare for which approval is sought, (ii) the tariff to be amended, (iii) the current fare to be changed, if any, and (iv) the current page and revision number of the affected tariff.

(2) Extensive or complicated exhibits included with the application shall be summarized in a statement explaining the intent of the proposal.

(c) The procedures in this section apply to interstate and overseas passenger fares. They shall be used only for proposing either (1) a decrease in an existing fare, or (2) a fare that is within the downward zone set for interstate and overseas passenger fares in Subpart C of 14 CFR Part 399 and does not increase an existing fare. For these purposes an increase or decrease in an existing fare means a change in the fare amount without changing any of the conditions.

(d) The procedures in this section do not apply to proposals to match other fares already filed on statutory notice set forth in § 221.60. Applications proposing fares that raise significant questions or lawfulness, as set forth in § 399.35 of this chapter, will be denied.

(e) An application under this section may be filed on a weekend or holiday if it proposes to match a fare approved under this section on the preceding business day. Such an application shall be filed by Western Union TWX (7108229066 CABAIR WSH). Along with the information set forth in paragraph (b)(1) of this section, it shall identify the fare to be matched, by carrier, fare class, and amount. If the application is filed before noon, as indicated on the TWX, the carrier may consider it as having been granted on that day and so put the new fare into effect at 12:01 a.m. the next day. The application will be acted on by the end of the first business day after it is filed. Any disapproval will be prospective only.

[ER-1205, 45 FR 87009, Dec. 31, 1980]

Subpart Q—Waiver of Tariff Regulations

§ 221.200 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this Part 221 or for modification of section 403 with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.201 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Civil Aeronautics Board, Tariffs Section, Washington, D.C. 20428, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Board to waive.

(b) Show in detail how the proposed provisions will be published in the tariff publication or other document under authority of such waiver if granted (submitting exhibits of the proposed publication where necessary to clearly show this information).

(c) Set forth all facts and circumstances on which the applicant relies as warranting the Board's granting the authority requested. No tariff publication or other documents shall be filed pursuant to such application prior to the Board's granting the authority requested.

Subpart R—Giving and Revoking Concurrences to Carriers

§ 221.210 Method of giving concurrence.

(a) *Prescribed form of concurrence.* A concurrence prepared in accordance with the form set forth in § 221.242 shall be used by a carrier to give authority to another carrier to issue and file with the Board tariff publications which contain joint rates, fares, or charges, including provisions governing such rates, fares, or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to publish joint rates, fares, or charges in which the carrier to whom the concurrence is given does not participate, and it shall not be used as authority to publish local rates, fares, or charges.

(b) *Number of copies.* Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Board, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier who issued the concurrence.

(c) *Conflicting authority to be avoided.* Care should be taken to avoid giving authority to two or more carriers which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.211 Method of revoking concurrence.

(a) *Prescribed form of revocation notice.* A concurrence may be revoked by filing with the Board in the manner specified in this section a Notice of Revocation of Concurrence prepared in accordance with the form set forth in § 221.243.

(b) *Sixty days' notice required.* Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Board. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Board, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Board and, at the same time that the original is transmitted to the Board, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) *Amendment of tariffs when concurrence revoked.* When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs on not less than statutory notice to become effective not later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978; ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.212 Method of withdrawing portion of authority conferred by concurrence.

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in the form and manner prescribed by § 221.211. Such revocation notice shall include reference to the new concurrence, "(set Concurrence No. ——)" to be shown at the end of the body of the document.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

Subpart S—Giving and Revoking Powers of Attorney to Agents

§ 221.220 Method of giving power of attorney.

(a) *Prescribed form of power of attorney.* A power of attorney prepared in accordance with the applicable form set forth in § 221.244 shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Board tariff publications which contain local or joint rates, fares, or charges, including provisions governing such rates, fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) *Designation of tariff issuing person by corporate agent.* When a corporation has been appointed as agent it shall forward to the Board a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Board. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word "Agent". When such a designee is replaced the Board shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his individual capacity. Every tariff issued by a corporate agent shall be issued in its name as agent.

(c) *Number of copies.* Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Board, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) *Conflicting authority to be avoided.* In giving powers of attorney, care should be taken to avoid giving authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63216, Dec. 31, 1981]

§ 221.221 Method of revoking power of attorney.

(a) *Prescribed form of revocation notice.* A power of attorney may be revoked only by filing with the Board in the manner specified in this section a Notice of Revocation of Power of Attorney prepared in accordance with the form set forth in § 221.245.

(b) *Sixty days' notice required.* Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Board. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Board, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Board and, at the same time that the original is transmitted to the Board, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) *Amendment of tariffs when power of attorney is revoked.* When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing agent of such tariffs on not less than statutory notice to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978; ER-1271, 46 FR 63216, Dec. 31, 1981]

§ 221.222 Method of withdrawing portion of authority conferred by power of attorney.

If a carrier desires to issue a power of attorney conferring less authority than a previous power of attorney issued in favor of the same agent, the new power of attorney shall not direct the cancellation of such previous power of attorney. In such circumstances, such previous power of attorney shall be revoked by issuing and filing a Notice of Revocation of Power of Attorney in the form and manner prescribed by § 221.221. Such revocation notice shall include reference to the new power of attorney "(see Power of Attorney No. ——)", to be shown at the end of the body of the document.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.223 Procedure for alternate agent to assume the duties of and take over tariffs of the principal agent.

(a) *Alternate may act only upon death or disability of principal agent.* An alternate agent may exercise the authority granted in the power of attorney to the principal agent only in the event of death or disability of the principal agent. The term "disability" as used here and in the power of attorney means resignation, permanent transfer to other duties, or other duties, or other permanent absence of the principal agent, and does not mean temporary absence of the principal agent caused by vacation, illness, or other similar causes. After an alternate agent has once exercised the authority granted by the power of attorney, the principal agent shall not thereafter act under such authority.

(b) *Affidavit to be made by alternate.* When an alternate agent assumes the duties of the principal agent, upon the death or disability of the principal agent, the alternate agent shall submit to the Board a sworn statement of the facts which justify his exercising the authority in the power of attorney. Such sworn statement shall be submitted to the Board on or before the date on which the alternate agent files any tariff publications under such authority.

(c) *Take-over supplement to be filed by alternate.* When an alternate agent assumes the duties of the principal agent, upon the death or disability of the principal agent, the alternate agent shall issue and file with the Board a supplement to each of the effective tariffs issued by the principal agent which shall comply with the following:

(1) Such supplements shall be filed to loose-leaf tariffs as well as book tariffs.

(2) Such supplement shall consist of a title page prepared in accordance with § 221.112(b) except:

(i) Such supplement shall not bear an effective date.

(ii) Such supplement shall contain the following statement (to be shown immediately below the description of the tariff's contents and territory):

On and after ————————(show date when principal agent ceased to act) this tariff (as amended), which was heretofore issued by ————————(show name and title of former agent), shall be considered as the issue of ————(show name of alternate), Alternate Agent.

(3) All such supplements to all effective tariffs shall be filed at one time under one letter of tariff transmittal.

(d) *Revised title pages to be filed by alternate.* Simultaneously with the filing of take-over supplements pursuant to § 221.223(c), the alternate agent shall file, on lawful notice, a revised title page to each effective loose-leaf tariff of the principal agent for the purpose of specifically showing the name and title of the alternate agent in lieu of the principal agent's name and title wherever the latter appears on the title page.

(e) *Alternate agent's title to be shown in tariff publications.* The title "Alternate Agent" shall be shown in connection with the alternate agent's name in all tariff publications which he issues and files under his authority as alternate agent and in all tariff publications making reference to tariffs of such alternate agent.

(f) *C.A.B. numbers of tariffs issued by alternate.* If an alternate agent has occasion to issue tariffs, such tariffs shall bear consecutive C.A.B. numbers continuing in the same C.A.B. number series of the tariffs issued by the principal agent.

(g) *Numbering alternate's letters of tariff transmittal.* All letters of tariff transmittal prepared by and in the name of an alternate agent shall be numbered consecutively continuing in the same tariff transmittal number series of the principal agent.

(h) *Numbering alternate's Special Tariff Permission applications.* Applications for Special Tariff Permission filed by an alternate agent shall be consecutively numbered continuing in the same application number series of the principal agent.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.224 Procedure for having new principal agent assume the duties of and take over tariffs of another agent.

(a) *Procedure.* When it is desired to transfer authority from the current principal agent (or an alternate agent acting in the principal's stead) to a new principal agent and have the new agent take over (assume the duties of issuing) all of the effective tariffs of the current agent, the following procedure shall be observed:

(1) Each carrier which has issued a power of attorney in favor of the current agent (or alternate agent) shall issue a new power of attorney in favor of the new principal agent (and his alternate) and such new power of attorney shall be prepared and filed in accordance with the following:

(i) Such new power of attorney shall direct the cancellation of the power of attorney issued in favor of the principal agent and alternate agent from whom the authority is transferred.

(ii) Such new power of attorney shall bear the following statement (in the upper right portion under the date):

> (This power of attorney shall become effective on the date of its receipt by the Civil Aeronautics Board.)

(iii) Such new power of attorney shall not confer less authority than the power of attorney which it cancels.

(iv) Such new power of attorney shall not be transmitted by the carrier direct to the Board but shall be transmitted to the new principal agent named therein.

(v) The new principal agent shall secure such powers of attorney from all carriers participating in all of the effective tariffs of the agent or alternate agent to be superseded and, immediately upon securing all such powers of attorney, the new principal agent shall file the originals thereof with the Board all at one time. A new corporate agent shall also file with the Board a certified excerpt of the minutes of the meeting of its Board of Directors showing the name and title of the persons designated to issue and file tariffs in the corporation's name.

(2) At the same time that the new principal agent files with the Board the originals of the powers of attorney pursuant to paragraph (a)(1)(v) of this section, the new principal agent shall file with the Board a take-over supplement, conforming with paragraph (b) of this section, to each one of the former agent's effective tariffs.

(b) *Take-over supplement to be filed by new principal agent.* The take-over supplement to be filed by the new principal agent pursuant to paragraph (a)(2) of this section shall conform with the following:

(1) Such supplements shall be filed to loose-leaf tariffs as well as book tariffs.

(2) The title page of such supplement shall be prepared in accordance with § 221.112(b) except that:

(i) The title page shall not bear an effective date.

(ii) The title page shall contain the following statement (to be shown immediately below the description of the tariff's contents and territory):

> On and after (*show date when new powers of attorney are filed with the Board*), this tariff (as amended), which was heretofore issued by (*show name and title of former issuing agent*), shall be considered as the issue of (*show name and title of new principal agent*).

(3) The page following the title page of such take-over supplement shall contain the following amendment of the list of participating carriers in the tariff (as amended) for the purpose of reflecting the changes in the power of attorney numbers and issuing agent:

Refer to page —— (or Original Page —— or —— Revised Page ——, if filed to a loose-leaf tariff) of the tariff (as amended) and change the List of Participating Carriers in its entirety to read as follows:

LIST OF PARTICIPATING CARRIERS

This tariff is issued and filed with the Civil Aeronautics Board by ———————(Show name of new principal agent) Agent for and on behalf of the following participating carriers (under authority of their powers of attorney filed with the Civil Aeronautics Board):

Participating carrier	Power of attorney No.

(List alphabetically all carriers participating in the tariff and their respective new power of attorney numbers).

Such amendment shall not attempt to add, change or eliminate participating carriers but only show the changes in the power of attorney numbers and the issuing agent. If power of attorney numbers have been omitted from the tariff pursuant to § 221.34(e), the take-over supplement may omit such numbers, provided that an accompanying statement conforming to § 221.34(e) is submitted to the Board with such supplement.

(4) All such take-over supplements to all of the effective tariffs of the predecessor agent shall be filed at one time under one letter of tariff transmittal and shall be accompanied by the powers of attorney in favor of the new principal agent.

(c) *Revised title pages to be filed by new principal agent.* Simultaneously with the filing of take-over supplements pursuant to § 221.224(b), the new principal agent shall file, on lawful notice, a revised title page to each effective loose-leaf tariff of the former agent for the purpose of specifically showing the name and title of the new principal agent in lieu of the former agent's name and title wherever the latter appears on the title page.

(d) *C.A.B. number of tariffs issued by new principal agent.* (1) If the new principal agent has not filed tariffs with the Board as an issuing agent prior to taking over the former agent's tariffs, the new agent shall number any tariffs, which he may subsequently issue, according to either one of the following two methods:

(i) The new principal agent shall number his tariffs consecutively continuing in the same tariff series of C.A.B. numbers of the former agent. In this event, the new principal agent shall notify the Board that his tariffs will be so numbered.

(ii) The new principal agent shall consecutively number his tariffs in his own tariff series of C.A.B. numbers commencing with C.A.B. No. 1.

(2) If the new principal agent has filed tariffs with the Board as an issuing agent prior to taking over the former agent's tariffs, the new agent shall continue to number any tariffs, which he may subsequently issue, consecutively in his own series of C.A.B. numbers.

(3) If tariffs issued by the new principal agent will be numbered in a different C.A.B. number series from those of the former agent, any supplements or loose-leaf pages filed to, any amendments directed of, or any references to the tariffs of the former agent shall show directly in connection with the C.A.B. numbers that they are in the series of the former agent, for example:

(i) When new agent issues a new tariff which is designated C.A.B. No. 1 in his series and cancels C.A.B. No. 4 in the series of the former agent:

C.A.B. No. 1

cancels

C.A.B. No. 4

(Agent John Does series)

(ii) When new agent issues a supplement to tariff issued by the former agent:

Supplement No. 3

to

C.A.B. No. 4

(Agent John Does series)

(iii) When new agent issues a revised page to tariff issued by the former agent:

C.A.B. No. 4 (Agent John Doe series)

1st Revised Page 10

cancels

Original Page 10

(e) *Numbering tariff transmittal of new principal agent.* All letters of tariff transmittal of the new principal agent shall be numbered consecutively in such agent's series of tariff transmittal numbers, and shall not be numbered in the former agent's series.

(f) *Numbering special tariff permission applications of new principal agent.* Applications for Special Tariff Permission filed by the new principal agent shall be numbered consequently in such agent's series of application numbers, and shall not be numbered in the former agent's series.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.225 New powers of attorney to be filed within 180 days after death or disability of either principal or alternate.

Upon the death or disability of either the principal agent or the alternate agent named in a power of attorney filed with the Board, a new power of attorney canceling the previously effective power of attorney and naming a new principal agent or a new alternate agent (as the case may be) thereafter to serve shall be filed within 180 days after such death or disability. The original thereof shall not be sent direct to the Board but shall be forwarded to the principal agent named therein who, after securing such instruments from all of the carriers participating in the effective tariffs, shall file the originals thereof with the Board all at one time. Such new powers of attorney shall become effective upon the date of their receipt by the Board and each power of attorney shall bear the following statement (in the upper right portion under the date):

(This power of attorney shall become effective on the date of its receipt by the Civil Aeronautics Board)

Each such new power of attorney shall not confer less authority than the power of attorney which it cancels. If the new powers of attorney name a new principal agent, the procedure in § 221.224 shall be followed. If the new powers of attorney name a new alternate agent without changing the principal agent, the principal agent shall also file amendments of the list of participating carriers in his tariffs to show the new power of attorney numbers at the same time as he files the new powers of attorney with the Board.

Subpart T—Adoption Publications Required To Show Change in Carrier's Name or Transfer of Operating Control

§ 221.230 Adoption notice.

(a) *Prescribed form of adoption notice to be filed by adopting carrier.* When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Board, and post for public inspection an adoption notice prepared in accordance with the form set forth in § 221.246. Such adoption notice shall contain no matter other than that required by the prescribed form. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the "former carrier", and the carrier under its new name or the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the "adopting carrier".)

(b) *Prepared, filed, and posted as a tariff publication.* The adoption notice shall be prepared, filed, and posted as a tariff publication. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) *Copies to be sent to agents and other carriers.* At the same time that the adoption notice is transmitted to the Board for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the former carrier has given a power of attorney or concurrence. (See § 221.233.)

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.231 Adoption supplements and revised title pages to be filed to former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to § 221.230, the adopting carrier shall issue, post and file with the Board:

(a) A consecutively numbered supplement to each effective tariff (loose-leaf or book) issued by the former carrier which shall be prepared in accordance with the form set forth in § 221.247 and shall contain no matter other than that required by the prescribed form, and

(b) A revised title page, on lawful notice, to each effective loose-leaf tariff issued by the former carrier for the purpose of specifically showing the name of the adopting carrier in lieu of the former carrier's name wherever the latter appears on the title page.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.232 Receiver shall file adoption notice and supplements.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Board an adoption notice and adoption supplements as prescribed by §§ 221.230 and 221.231 and shall comply with the requirements of this subpart. An adoption notice filed by a receiver shall be numbered consecutively in the tariff series of C.A.B. numbers of the former carrier and all subsequent tariffs issued by the receiver shall be consecutively numbered in that series. When such receivership relationship is terminated, the carrier taking over the assets shall file an adoption notice and adoption supplements in conformity with §§ 221.230 and 221.231.

§ 221.233 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concurrence in tariffs issued by other carriers or is shown as a participating carrier under power of attorney in tariffs issued by agents, the issuing carriers and agents of such tariffs shall, upon receipt of the adoption notice, promptly file on statutory notice the following amendments to their respective tariffs:

(a) Cancel the name of the former carrier from the list of participating carriers. Such cancellation shall make reference to the substitution notice required by paragraph (c) of this section.

(b) Add the adopting carrier (in alphabetical order) to the list of participating carriers. Such addition shall make reference to the substitution notice required by paragraph (c) of this section. If the adopting carrier already participates in such tariff, reference to the substitution notice shall be added in connection with such carrier's name in the list of participating carriers.

(c) Add the following substitution notice (following the list of participating carriers):

SUBSTITUTION NOTICE

____________ (Show adopting carrier's name) by its Adoption Notice C.A.B. No. — having taken over the tariffs, etc. of ____________ (Show former carrier's name) is hereby substituted for ____________ (Show former carrier's name) wherever the latter appears in this tariff (as amended).

Where the former carrier is specifically named in other parts of the tariff, the adopting carrier's name shall be specifically shown in lieu thereof whenever the issuing carrier or agent next has occasion to amend such parts of the tariff for other reasons.

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978]

§ 221.234 C.A.B. numbers of tariffs issued by adopting carrier and method of publishing reference to C.A.B. numbers of former carrier's tariffs.

(a) *Numbering adopting carrier's tariffs.* Except as otherwise provided in § 221.232, the adopting carrier shall consecutively number its adoption notice and tariffs in its own tariff series of C.A.B. numbers, and not in the series of the former carrier. If the adopting carrier has not filed tariffs with the Board previous to its adoption notice, the adoption notice shall be designated C.A.B. No. 1 and subsequent tariffs shall be consecutively numbered C.A.B. Nos. 2, 3, 4, 5, etc.

(b) *Method of publishing reference to former carrier's tariffs* (This paragraph is not applicable where adopting carrier is a receiver or other fiduciary). Any supplements or loose-leaf pages filed to, any amendments directed of, or any references to the tariffs of the former carrier shall show directly in connection with the C.A.B. number that such number is in the series of the former carrier, for example:

(1) If the adopting carrier issues and files a tariff which cancels a tariff issued by the former carrier, the title page of the new tariff shall set forth its C.A.B. number and the cancellation of the former tariff in the manner shown in the following example:

C.A.B. No. 2

cancels

C.A.B. No. 5

(John Doe Air Co. series)

(2) If the adopting carrier issues a supplement to a tariff issued by the former carrier, the title page of the supplement shall set forth the supplement and C.A.B. numbers in the manner shown in the following example:

Supplement No. 6

to

C.A.B. No. 5

(John Doe Air Co. series)

Supplements Nos. 5 and 6 are the only effective supplements

(3) If the adopting carrier issues a revised or original page to a loose-leaf tariff issued by the former carrier, the page shall set forth the C.A.B. number and page reference in the manner shown in the following example:

C.A.B. No. 5

(John Doe Air Co. series)

3rd Revised Page 4

cancels

2nd Revised Page 4

§ 221.235 Concurrences or powers of attorney to be reissued.

(a) *Adopting carrier shall reissue adopted concurrences and powers of attorney.* Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instruments with the Board), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier, for example:

Concurrence No. 1

(cancels Concurrence No. 6 issued

by John Doe Airways Co., Inc.)

If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of §§ 221.212 and 221.222 shall be observed. Concurrences and powers of attorney which will not be replaced by new issues shall be revoked in the form and manner and upon the notice required by §§ 221.211 and 221.221.

(b) *Reissue of other carriers' concurrences issued in favor of former carrier.* Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§ 221.211 and 221.212 shall be observed.

(Approved by the Office of Management and Budget under control number 3024-0038)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.236 Numbering adopting carrier's letters of tariff transmittal.

The adopting carrier (except a receiver or other fiduciary) shall consecutively number its letters of tariff transmittal in its own series of tariff transmittal numbers (commencing with No. 1 if the adopting carrier has not filed tariff publications with the Board prior to its adoption notice). A receiver or other fiduciary shall consecutively number its letters of tariff transmittal in the former carrier's series of tariff transmittal numbers.

§ 221.237 Numbering adopting carrier's Special Tariff Permission applications.

The adopting carrier (except a receiver or other fiduciary) shall consecutively number its applications for Special Tariff Permission in its own series of application numbers (commencing with No. 1 if the adopting carrier has not filed such applications prior to the adoption). A receiver or other fiduciary shall consecutively number its applications for Special Tariff Permission in the former carrier's series of application numbers.

§ 221.238 Cessation of operations without successor.

If a carrier cease operations without having a successor, it shall:

(a) File a supplement to each tariff of its own issue and cancel such tariff in its entirety. Such supplement shall state that operations are discontinued and give reference to the Board's order permitting such discontinuance.

(b) Revoke all powers of attorney and concurrences which it has issued.

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[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1271, 46 FR 63218, Dec. 31, 1981]

Subpart U—Prescribed Forms

§ 221.240 Letter of tariff transmittal.

(a) *Form.* The letter of tariff transmittal required by § 221.163 shall contain the following information and shall be prepared substantially in the following form (on durable paper 8½ by 11 inches):

Name ———— (1) ————————
Mail address ————————————
Date ——————————————
Tariff Transmittal No. —— (2) ——.

To the CIVIL AERONAUTICS BOARD,
Tariffs Section, Washington, D.C., 20428.

Sent you for filing in compliance with the requirements of the Federal Aviation Act of 1958, as amended, is the accompanying tariff publication issued by —— (1) —— and bearing:

(3) Tariff C.A.B. No. ——, effective —.
— Revised Page — of C.A.B. No. —, effective ————.
Original Page — of C.A.B. No. —, effective ————.
Supplement No. — to C.A.B. No. —, effective ————.

(4) The above-named publication is concurred in by all carriers participating therein under concurrences (or, powers of attorney) which are now on file with the Civil Aeronautics Board except that the concur-

rences (or, powers of attorney) of the following named carriers are attached hereto:

——————————————————

——————————————————

Sufficient copies of the above-named publication for posting in accordance with Subpart N of your Economic Regulations have been sent to each carrier participating in the above-named publication.

(5) ——————————————

——————————————————

Signature ———— (6) ————

(Show typed name and title of issuing officer or agent below signature.)

(For explanations of reference marks shown in above form, see paragraph (b) of this section.)

(b) *Explanations of reference marks.* Where a reference mark is shown in the above letter of tariff transmittal form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

Reference mark	Explanation
(1)	Show name of issuing carrier or agent exactly as it appears in the tariff publication. If issued by an agent, show the agent's title after the agent's name.
(2)	Show consecutive tariff transmittal number. Each issuing carrier or agent shall consecutively number its letter of tariff transmittals (commencing with Tariff Transmittal No. 1). Only one series of tariff transmittal numbers shall be used by each carrier or agent and separate series of numbers for passenger tariffs and property tariffs shall not be used.
(3)	Use whichever form of reference shown is appropriate for listing the publication filed. Each publication transmitted for filing shall be listed.
(4)	Omit the paragraph if no carriers other than the issuing carrier participate in the publication filed. Omit the clause beginning with the word "except" if all concurrences or powers of attorney have been previously filed with the Board.
(5)	Here state the changes and additions in the publications and the reasons therefor, or attach such statement and make reference thereto. (See § 221.165.)
(6)	The letter of transmittal shall bear the signature of the issuing officer or agent of the tariff publication filed. In the case of a corporate agent the signature of the designee of the corporation authorized by it to issue and file tariffs with the Board in its name shall appear at this point.

§ 221.241 Application for Special Tariff Permission.

(a) *Form.* The application for Special Tariff Permission provided for in Subpart P of this part shall contain the following information, as far as applicable, and shall be prepared substantially in the following form (on durable paper 8½ by 11 inches):

Name ———— (1) ————————
Mail address ——————————
Date ——————————————
Special Tariff Permission Application No. —— (2) ——.

To the CIVIL AERONAUTICS BOARD,
Tariffs Section, Washington, D.C. 20428.

——— (1) ——— hereby petitions the Civil Aeronautics Board that your petitioner be permitted under Section 403 of the Federal Aviation Act of 1958, as amended, to put in force the following proposed tariff provisions to become effective not less than —— days after the filing thereof with the Civil Aeronautics Board:

——————— (3) ———————————

The proposed tariff provisions will be published in — (4) —.

The proposed tariff provisions will supersede and take the place of —— (5) ——.

The following air carriers and foreign air carriers are known to maintain competitive ————————— (Fares, rates, or charges) between the points where the proposed tariff provisions will apply (or points related thereto): ————(6) ————.

The basis on which the proposed ————————— (Fares, rates, or charges) are constructed is as follows: ———— (7) ————.

The following facts are relied upon by your petitioner as constituting special circumstances or unusual conditions which justify the request made herein: ————(8) ————.

——————— (1) ————
By ——————— (9) ——————
(Signature)

(Show typed name and title of issuing officer or agent under signature)

(For explanations of reference marks shown in the above form, see paragraph (b) of this section.)

(b) *Explanations of reference marks shown in prescribed form.* Where a reference mark is shown in the above Special Tariff Permission application form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

Reference mark	Explanation
(1)	Show name of issuing carrier or agent making the application exactly as it appears in such carrier's or agent's tariffs. If application is made by an agent, it shall state that the application is filed "for and on behalf of all carriers parties to tariff C.A.B. No. ——".
(2)	Show a consecutive application number. Each issuing carrier or agent shall consecutively number its Special Tariff Permission applications (commencing with No. 1) in only one series of application numbers.
(3)	The proposed rates, fares, charges, rules, or other tariff provisions shall be set forth clearly and completely, including the points of origin and destination of proposed rates, fares, and charges and the exact wording of proposed rules, commodity descriptions, routing, and other provisions. If the proposed provisions are to be published in a supplement, the proposed specific cancellation of the provisions to be superseded in the tariff and prior supplements shall be set forth. If desired, the proposed tariff provisions may be set forth in an attached exhibit or exhibits identified as Exhibits A, B, C, etc. and, in such instances, the application shall make reference to such exhibits substantially in the following manner: "The proposed tariff provisions are as shown in Exhibit A attached hereto and hereby made a part hereof." If the Special Tariff Permission application is granted by the Board, only the proposed tariff provisions specified or referred to in this part of the application may be published under authority of the Special Tariff Permission (except for any portion of the proposed provisions which is denied the authority requested).
(4)	Show the tariff publication(s) in which the proposed provisions will be published and the publication(s) to be canceled thereby, using whichever of the following forms of reference is appropriate: (i) "—— Revised Page ——(which will cancel Original Page ——, or —— Revised Page ——) of C.A.B. No. ——." (Or, in lieu of the above form of reference) "Consecutive revision(s) of page(s) —— of C.A.B. No. ——." (ii) "Original Page(s) —— to be added to C.A.B. No. ——." (iii) "Consecutively numbered supplement (which will cancel Supplement No. ——) to C.A.B. No. ——." (iv) "New tariff C.A.B. No. ——which will cancel tariff C.A.B. No. ——."
(5)	Show the published rates, fares, or other tariff provisions which it is desired to change. This may be done either by reference to an accompanying exhibit containing such information, or by reference to the number of the page and the item, rule, or similar unit of the tariff or supplement in which such tariff provisions are published.
(6)	When applicable show the names of the carriers known to maintain competitive rates, fares, and other tariff provisions together with reference (by C.A.B. number) to the respective tariffs containing such competitive tariff provisions, regardless of whether the proposed tariff provisions will result in greater, less, or the same charges or services than those maintained by the competitive carriers.
(7)	When applicable describe the specific basis on which the proposed rates, fares, or charges were constructed or determined. For example, if they are intended to meet competitive rates, fares, or charges, that fact should be stated together with reference (by C.A.B. number) to the tariffs containing such competitive rates, fares, or charges. If meeting a combination rate, fare, or charge, information shall be stated for each factor used in constructing such combination. If the proposed rate, fare, or charge is not designed to meet competition, state how the level or amount of the proposed rate, fare, or charge was computed or determined.
(8)	State the specific facts which are relied upon as constituting special circumstances or unusual conditions justifying the requested permission together with any related facts or circumstances which may aid the Board in determining whether the requested permission is justified.
(9)	The issuing officer or agent of the proposed tariff publication shall sign the application for Special Tariff Permission. In the case of a corporate agent the signature of the designee of the corporation authorized by it to issue and file tariffs with the Board in its name shall appear at this point.

(c) *Telegraphic application.* Application may be submitted initially by telegraph or cable, provided that:

(1) All necessary information and references are contained in the telegraphic request; and

(2) The applicant immediately submits written confirmation, in duplicate, which shall observe the requirements of paragraphs (a) and (b) of this section.

§ 221.242 Concurrence.

(a) *Form.* The concurrence required by § 221.210 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

CONCURRENCE

(1) Concurrence No. ——
(2) (Cancels Concurrence No. ——)
Name —————— (3) ——
Mail address ——————
Date ——————

Know All Men by This Instrument:

That —— (3) —— hereby assents to and concurs in the publication and filing with the Civil Aeronautics Board of tariffs (including supplements thereto and original or revised pages thereof) which —— (4) —— may issue and file and in which —— (3) —— is shown as a participating carrier, and the latter carrier hereby makes itself a party thereto and bound thereby in so far as such tariff publications contain joint rates, fares, or charges (including their governing provisions) in which the latter carrier is shown as participating.

RESTRICTION: This concurrence is further restricted to the publication and filing of
———————— (5) ————————
———— (3) ————
By: ———— (6) ————
(Signature)
(Show typed name and title under signature)
(7) Attest:
(Affix corporate seal) —— (Signature) ——
(Secretary)
Duplicate mailed to: —— (4) ——
at: ————————
(Show full address)

(For explanations of reference marks shown in above form, see paragraph (b) of this section.)

(b) *Explanations of reference marks.* Where a reference mark is shown in the above concurrence form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference marks:

Reference mark	Explanation
(1)	Show a consecutive concurrence number. All concurrencies issued by each carrier shall be consecutively numbered 1, 2, 3, 4, etc. in only one series of concurrence numbers.
(2)	A concurrence may only cancel a previous concurrence given to the same carrier (or its successor-in-interest). A concurrence shall not cancel a previous concurrence which conferred greater authority (see § 221.212).
(3)	Show name of carrier issuing the concurrence. Such name shall be shown exactly as it appears in such carrier's Certificate of Public Convenience and Necessity, Permit, Letter of Registration, or other form of operating authority issued by the Board, or such other name which has specifically been authorized by order of the Board.
(4)	Show name of carrier to whom concurrence is given. Such name shall be shown exactly as it appears in the tariffs issued by such carrier. The term "successor-in-interest", as shown in the concurrence after such carrier's name, shall mean any carrier who may adopt the tariffs issued by the carrier to whom the concurrence is given.
(5)	If no restrictions are to be placed on the authority conferred in the first paragraph of the concurrence, the paragraph captioned "RESTRICTION" shall be deleted in its entirety. If the authority is to be restricted to the publication and filing of joint rates, fares, or charges (including their governing provisions) applying between particular points or territories or on particular traffic or via particular routes, such joint rates, fares, or charges shall be specified in explicit and definite terms in the paragraph captioned "RESTRICTION". No restriction shall be imposed in the concurrence with respect to the amounts or level of rates, fares, or charges. If the authority is to be restricted to the publication and filing of a particular tariff, the restriction shall be shown in the following manner: "RESTRICTION: This authority is restricted to the publication and filing of ————————, (Show exact title of tariff), C.A.B. No. —, including supplements thereto and revised or original pages thereof." If the latter authority is to include successive issues of the tariff named in the restriction, the restriction shall be shown in the following manner: "RESTRICTION: This authority is restricted to the publication and filing of ————————, (Show exact title of tariff) C.A.B. No. —, and successive issues thereof, including supplements to and revised or original pages of said publications."
(6)	The concurrence shall be signed by the owner if the carrier is an individual person and by a partner if the carrier is a partnership. If the carrier is a corporation or similar entity, the concurrence shall be signed by an officer thereof.
(7)	If the carrier is a corporation (or similar entity), the concurrence shall be attested by the secretary (or similar officer) thereof and the carrier's corporate seal shall be affixed thereto. If the carrier is a foreign carrier and, under the laws of the carrier's native country, such seal and attestation are not required to authenticate the concurrence, affixing the seal and attesting the concurrence are not required, provided that such carrier certifies to the Board in writing that the laws of the carrier's native country do not require such attestation and seal to authenticate such concurrences.

§ 221.243 Notice of Revocation of Concurrence.

(a) *Form.* The Notice of Revocation of Concurrence required by § 221.211 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

NOTICE OF REVOCATION OF CONCURRENCE

Name (1)——————————
Mail address ——————————
Date ——————————

Know All Men by This Instrument:

That effective ———— (2) ————, Concurrence No. — issued by — (3) — in favor of —— (4) —— is hereby canceled and revoked in its entirety.

———— (1) ————
By ———— (5) ————
(Signature)

(Show typed name and title under signature.)

(6) Attest:
(Affix corporate seal) —— (Signature) ——
(Secretary)

Duplicate mailed to: ————
(Officer)
—— (7) ——
(Carrier)
————
(Address)
on: —— (8) ——

(For explanations of reference marks shown in the above form, see paragraph (b) of this section.)

(b) *Explanations of reference marks.* Where a reference mark is shown in the above form of Notice of Revocation of Concurrence, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

Reference mark	Explanation
(1)	Show full name of carrier issuing the notice of revocation.
(2)	Show full date (month, date, and year) on which the revocation and cancellation of the concurrence are to become effective.
(3)	Show name of carrier who issued the concurrence to be revoked. Such name shall be shown exactly as it appears in the concurrence.
(4)	Show name of carrier in whose favor the concurrence was issued. Such name shall be shown exactly as it appears in the concurrence to be revoked.
(5)	The revocation shall be signed by the individual owner if the carrier is an individual person and by a partner if the carrier is a partnership. If the carrier is a corporation or similar entity, the revocation shall be signed by an officer thereof.
(6)	If the carrier is a corporation (or similar entity), the revocation shall be attested by the secretary (or similar officer) thereof and the carrier's corporate seal shall be affixed thereto. If the carrier is a foreign carrier and its concurrence which is being revoked does not bear such attestation and seal, the revocation of such concurrence is not required to bear such attestation and seal.
(7)	Duplicate is to be sent to carrier to whom the concurrence was given except that if the tariffs of such carrier have been adopted by another carrier, the duplicate shall be sent to the latter carrier.
(8)	Show date on which the duplicate was mailed to the carrier named.

§ 221.244 Power of attorney.

(a) *Form.* The power of attorney required by § 221.220 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

POWER OF ATTORNEY

(1) Power of Attorney No. ——
(2) (Cancels Power of Attorney No. ——)
Name ———— (3) ————
Mail address ——————
Date ——————

Know All Men by This Instrument:

That —— (3) ——, a common carrier by aircraft, hereby makes and appoints —— (4) —— attorney and agent to publish and file, for such carrier, tariffs (including supplements thereto and revised or original pages thereof) which such carrier is required or permitted to file with the Civil Aeronautics Board by the Federal Aviation Act of 1958, as amended, and the regulations of the Civil Aeronautics Board issued pursuant thereto, and hereby ratifies and confirms all that said attorney and agent may lawfully do by virtue of the authority herein granted and hereby assumes full responsibility for the acts and failures to act of said attorney and agent.

RESTRICTION: This authority is restricted to the publication and filing of —— (5) ——.

And, further, that —— (3) —— hereby makes and appoints —— (6) —— alternate attorney and agent to do and to perform the same acts and exercise the same authority herein granted to —— (4) —— in the disability of —— (4) ——.

———— (3) ————
By ———— (7) ————
(Signature)

(Show typed name and title under signature)

(8) Attest:

(Show corporate seal) —— (Signature) ——
(Secretary)

Duplicate mailed to: —— (4) ——,

Agent at: ——————————
(Show mail address)

(For explanations of reference marks shown in above form see paragraph (b) of this section.)

(b) *Explanations of reference marks.* Where a reference mark is shown in the above power of attorney form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

Reference mark	Explanation
(1)	Show a consecutive power of attorney number. All powers of attorney issued by each carrier shall be consecutively numbered 1, 2, 3, 4, etc. in only one series of power of attorney numbers.
(2)	A power of attorney may only cancel a previous power of attorney given to the same agent and alternate agent (except as otherwise provided in §§ 221.224 and 221.225). A power of attorney shall not cancel a previous power of attorney which conferred greater authority (see § 221.222).
(3)	Show name of carrier issuing the power of attorney. The name shall be shown exactly as it appears in such carrier's Certificate of Public Convenience and Necessity, Permit, Letter of Registration, or other form of operating authority issued by the Board, or such other name which has specifically been authorized by order of the Board.
(4)	Show name of agent to whom the power of attorney is given. The agent's name shall be shown uniformly in the same manner in all powers of attorney given by all carriers to such agent and shall be shown exactly as it appears in the tariffs of such agent.
(5)	If no restrictions are to be placed on the authority conferred in the power of attorney, the paragraph captioned "RESTRICTION" shall be deleted in its entirety. If the authority is to be restricted to the publication and filing of rates, fares, or charges (including their governing provisions) applying between particular points or territories or on particular traffic or via particular routes, such rates, fares, or charges shall be specified in explicit and definite terms in the paragraph captioned "RESTRICTION". No restriction shall be imposed in the power of attorney with respect to the amounts or level of rates, fares, or charges. If the authority is to be restricted to the publication and filing of a particular tariff, the restriction shall be shown in the following manner: "RESTRICTION: This authority is restricted to the publication and filing of ——————————(Show exact title of tariff) C.A.B. No. ——, including supplements thereto and revised or original pages thereof." If the latter authority is to include successive issues of the tariff named in the restriction, the restriction shall be shown in the following manner: "RESTRICTION: This authority is restricted to the publication and filing of ——————————(Show exact title of tariff) C.A.B. No. ——, and successive issues thereof, including supplements to and revised or original pages of said publications."
(6)	Show name of alternate agent. Each principal agent shall have only one alternate agent. The alternate agent's name shall be shown uniformly in the same manner in all carriers' powers of attorney issued in favor of such alternate. In the case of a corporate agent this entire paragraph of the form shall be omitted.
(7)	The power of attorney shall be signed by the owner if the carrier is an individual person and by a partner if the carrier is a partnership. If the carrier is a corporation or similar entity, the power of attorney shall be signed by an officer thereof.
(8)	If the carrier is a corporation (or similar entity), the power of attorney shall be attested by the secretary (or similar officer) thereof and the carrier's corporate seal shall be affixed thereto. If the carrier is a foreign carrier and, under the laws of the carrier's native country, such seal and attestation are not required to authenticate the document, affixing the seal and attesting the document is not required, provided that such carrier or its agent certifies to the Board in writing that the laws of the carrier's native country do not require such attestation and seal to authenticate such powers of attorney.

§ 221.245 Notice of Revocation of Power of Attorney.

(a) *Form.* The Notice of Revocation of Power of Attorney required by § 221.221 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

NOTICE OF REVOCATION OF POWER OF ATTORNEY

Name ———— (1) ————
Mail address ————————
Date ————————

Know All Men By This Instrument:

That effective —— (2) ——, Power of Attorney No. —— issued by —— (3) ——in favor of —— (4) ——, attorney and agent, and —— (5) ——, alternate attorney and agent, is hereby canceled and revoked in its entirety.

———— (1) ————
By: ———— (6) ————
(Signature)

(Show typed name and title under the signature.)

(7) Attest:

(Affix corporate seal) — (Signature) —
(Secretary)

Duplicate mailed to: ——— (8) ———
at: ———————
on: ——— (9) ———

(For explanations of reference marks used in above form, see paragraph (b) of this section.)

(b) *Explanations of reference marks.* Where a reference mark is shown in the above form of Notice of Revocation of Power of Attorney, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

(1)	Show full name of carrier issuing the notice of revocation.
(2)	Show full date (month, date, and year) on which revocation and cancellation of power of attorney are to become effective.
(3)	Show full name of carrier who issued the power of attorney to be revoked. Such name shall be shown exactly as it appears in the power of attorney.
(4)	Show name of principal agent exactly as it appears in the power of attorney to be revoked.
(5)	Show name of alternate agent exactly as it appears in the power of attorney to be revoked. In the case of a corporate agent all references to an alternate attorney as agent shall be omitted.
(6)	The notice of revocation shall be signed by the owner if the carrier is an individual person and by a partner if the carrier is a partnership. If the carrier is a corporation (or similar entity), the notice of revocation shall be signed by an officer thereof.
(7)	If the carrier is a corporation (or similar entity), the revocation shall be attested by the secretary (or similar officer) thereof and the carrier's corporate seal shall be affixed thereto. If the carrier is a foreign carrier and its power of attorney which is being revoked does not bear such attestation and seal, the revocation of such power of attorney is not required to bear such attestation and seal.
(8)	Show name of principal agent unless the alternate agent has taken over the tariffs of the principal agent upon the death or disability of the latter. In the latter case, the alternate agent's name shall be shown and the duplicate shall be mailed to the alternate agent.
(9)	Show date on which the duplicate was mailed to the agent or alternate agent (as the case may be).

§ 221.246 Adoption notice.

(a) *Form.* The adoption notice required by § 221.230 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches with a clear margin of not less than 1 inch at left side):

(1) C.A.B. No. __

__________ (2) __________

ADOPTION NOTICE

The above-named carrier hereby adopts, ratifies, and makes its own in every respect, as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, traffic agreements, statements of divisions, powers of attorney, concurrences, or other instruments whatsoever, including supplements or amendments thereto, filed with the Civil Aeronautics Board by or on behalf of, or heretofore adopted by, ____(3)____ prior to ____(6)____.

Issued pursuant to Subpart T, Part 221, of the Economic Regulations and Order No. ____(4)____ of the Civil Aeronautics Board.

ISSUED: ____(5)____

Issued by:

(show name and title of issuing officer)

(show full address)

(For explanation of reference marks shown in above form, see paragraph (b) of this section.)

(b) *Explanations of reference marks.* Where a reference mark is shown in the above adoption notice form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

Reference mark	Explanation
(1)	(i) Except as provided under (ii) below, the adoption notice shall bear a consecutive C.A.B. number in the tariff series of the adopting carrier. If the adopting carrier has not filed tariffs with the Board previous to its adoption notice, the adoption notice shall be designated C.A.B. No. 1. (ii) If the adopting carrier is a receiver or other fiduciary, its adoption notice shall bear a consecutive C.A.B. number in the tariff series of the former carrier.
(2)	Show the name of the adopting carrier. If the adoption notice is issued by a receiver or other fiduciary, show the former carrier's name and, immediately below such name, show the name and title of the fiduciary in parentheses.
(3)	Show the former carrier's name.
(4)	Show the number of the Board's order. which approved the change in name or transfer of operating control.
(5)	Show the date on which the adoption notice is prepared and transmitted to the Board for filing.
(6)	Show the date on which the change in name or transfer of operating control occurs. If the Board's approval of such change in name or transfer of operating control is required, such date shall not be earlier than the Board's approval.

§ 221.247 Adoption supplement.

(a) *Form.* The adoption supplement required by § 221.231 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches with a clear margin of not less than 1 inch at left side):

(1) Supplement No. ___
to
C.A.B. No.
((2) series)
Supplements Nos. ___ are the
only effective supplements.

______(3)______

Supplement No. __

to

______(4)______
______(5)______
______(6)______

ADOPTION ANNOUNCEMENT

Effective ___(9)___, this tariff (as amended) became the tariff of ___(3)___ as stated in such carrier's adoption notice C.A.B. No. ______.

Issued pursuant to Subpart T, Part 221, of the Economic Regulations and Order No. ___(7)___ of the Civil Aeronautics Board.

Issued: ___(8)___
Issued by:
(name and title of issuing officer)
(full address)

(For explanation of reference marks shown in above form, see paragraph (b) of this section.)

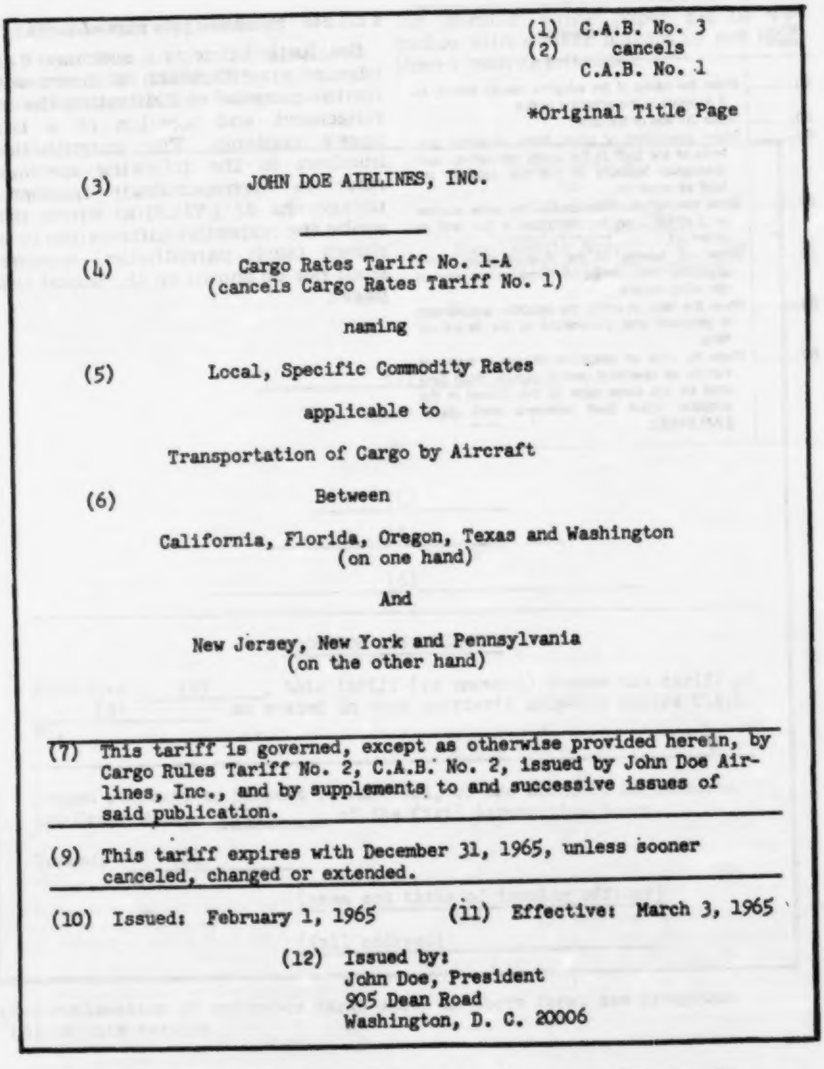
(b) *Explanations of reference marks.* Where a reference mark is shown in the above adoption supplement, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

Reference mark	Explanation
(1)	The supplement number shall be consecutive to the number of the last previous supplement issued to the tariff.
(2)	Show the former carrier's name exactly in the same manner as it appears in the tariff.

Reference mark	Explanation
(3)	Show the name of the adopting carrier exactly as it appears in the adoption notice.
(4)	Show the title of the tariff.
(5)	Show description of rates, fares, or other contents of the tariff in the same manner as such description appears on the title page of the tariff as amended.
(6)	Show description of territory in the same manner as it appears on the title page of the tariff as amended.
(7)	Show the number of the Board's order which approved the change in name or transfer of operating control.
(8)	Show the date on which the adoption supplement is prepared and transmitted to the Board for filing.
(9)	Show the date on which the change in name or transfer of operating control occurs. Such date shall be the same date as that shown in the adoption notice (see reference mark (8) in § 221.246(b)).

§ 221.248 Specimen title page of tariff.

Set forth below is a specimen title page of a tariff which is shown only for the purpose of illustrating the arrangement and location of a title page's contents. The parenthetical numbers in the following specimen refer to correspondingly numbered paragraphs of § 221.31(a) which prescribe the respective information to be shown (such parenthetical numbers shall not be shown on the actual title page):



(1) C.A.B. No. 3
(2) cancels
C.A.B. No. 1

*Original Title Page

(3) JOHN DOE AIRLINES, INC.

(4) Cargo Rates Tariff No. 1-A
(cancels Cargo Rates Tariff No. 1)

naming

(5) Local, Specific Commodity Rates

applicable to

Transportation of Cargo by Aircraft

(6) Between

California, Florida, Oregon, Texas and Washington
(on one hand)

And

New Jersey, New York and Pennsylvania
(on the other hand)

(7) This tariff is governed, except as otherwise provided herein, by Cargo Rules Tariff No. 2, C.A.B. No. 2, issued by John Doe Airlines, Inc., and by supplements to and successive issues of said publication.

(9) This tariff expires with December 31, 1965, unless sooner canceled, changed or extended.

(10) Issued: February 1, 1965 (11) Effective: March 3, 1965

(12) Issued by:
John Doe, President
905 Dean Road
Washington, D. C. 20006

(Actual size of page shall be 8½ by 11 inches with a clear margin of not less than 1 inch at left side of page.)

* - Designation "Original Title Page" shall be shown only on the title page of a loose-leaf tariff and not on a book tariff.

Subpart V—Complaints Against Tariffs

§ 221.250 Complaints against tariffs.

All complaints against any air carrier's or foreign air carrier's tariffs, requests to prevent any foreign air carrier's tariffs from taking effect, and matters arising subsequent thereto, shall be governed by Subpart E and the other pertinent provisions of Part 302 of this chapter.

PART 222—INTERMODAL CARGO SERVICES BY FOREIGN AIR CARRIERS

Sec.
222.1 Applicability.
222.2 Scope of permissible intermodal cargo services.
222.3 Application for Statement of Authorization.
222.4 Procedure on receipt of application for Statement of Authorization.
222.5 Cancellation or conditioning of a Statement of Authorization.
APPENDIX A—CAB FORM 222

AUTHORITY: Sec. 204, 402, Pub. L. 85-726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1372.

SOURCE: ER-1228, 46 FR 32556, June 24, 1981, unless otherwise noted.

§ 222.1 Applicability.

This part applies to all air transportation of property that includes both air movement by a direct foreign air carrier and surface transportation to or from any point within the United States (hereafter referred to as "intermodal cargo services").

§ 222.2 Scope of permissible intermodal cargo services.

(a) Under its foreign air carrier permit, a direct foreign air carrier may provide or control the surface portion of intermodal cargo services within a zone extending 35 miles from the boundary of the airport or city it is authorized to serve. A direct foreign air carrier shall not provide or control the surface portion of intermodal cargo services outside of this 35-mile zone unless authorized to do so by the Board in accordance with §§ 222.3, 222.4 and 222.5.

(b) A direct foreign air carrier shall be considered to control the surface portion of intermodal cargo services if it has or publicly represents that it has any responsibility for or control over the movement of, or has any ownership, controlling or exclusive dealing relationship with, the carrier actually providing the surface transportation.

(c) Except as provided in paragraphs (a) and (b) of this section with respect to control by a direct foreign air carrier, any U.S. or foreign indirect air carrier, surface carrier or surface freight forwarder may provide the surface portion of intermodal cargo services without limitation as to geographic area within the United States.

(d) The Board may withdraw the authority of an indirect foreign air carrier to provide the surface portion of intermodal cargo services, or the authority of a direct foreign air carrier to offer intermodal cargo services pursuant to joint fares with other carriers providing the surface transportation, at any time, with or without hearing, if the Board finds it in the public interest.

§ 222.3 Application for Statement of Authorization.

(a) Application for a Statement of Authorization shall be filed with the Board's Regulatory Affairs Division, Bureau of International Aviation, in duplicate, on CAB Form 222 (obtainable from the Civil Aeronautics Board, Publications Services Division, Washington, D.C. 20428), attached as Appendix A. In most cases the Board will act upon applications for Statements of Authorization within 60 days.

(b) Persons objecting to an application for a Statement of Authorization shall file their objections with the Regulatory Affairs Division, Bureau of International Aviation, within 28 days of the filing date of the application. The Board will list the names and nationalities of all persons applying for Statements of Authorization in its Weekly Summary of Filings.

(c) An application shall include a copy of any bilateral agreement, memorandum of consultations, or diplomatic note or letter, in support of the authority requested. Documents that appear in official U.S. publications may be incorporated by reference.

(Approved by the Office of Management and Budget under control number 3024-0045)

[ER-1228, 46 FR 32556, June 24, 1981, as amended by ER-1348, 48 FR 31635, July 11, 1983]

§ 222.4 Procedure on receipt of application for Statement of Authorization.

(a) After review of an application form filed under § 222.3, the Board will take one or more of the following actions:

(1) Indicate by stamp on CAB Form 222 the effective date of the Statement of Authorization, and return to the carrier the duplicate copy of Form 222 as evidence of approval under this part;

(2) Request additional information from the applicant;

(3) Set the application for notice and hearing procedures;

(4) Disapprove the application or approve it subject to such terms, conditions, or limitations as may be required by the public interest; or

(5) Reject the application on the grounds that there is no agreement by the United States authorizing the proposed services.

(b) An order disapproving an application or subjecting it to conditions or limitations shall be transmitted to the President for stay or disapproval. If the President does not stay or disapprove the Board's order, it shall become effective on the 31st day after transmittal to the President, or within any longer time period established in the order.

§ 222.5 Cancellation or conditioning of a Statement of Authorization.

A Statement of Authorization may be canceled or made subject to additional terms, conditions, or limitations, at any time, with or without hearing, if the Board finds that it is in the public interest to do so. An order canceling or conditioning a Statement of Authorization shall be submitted to the President for stay or disapproval and shall become effective on the 31st day after transmittal or within any longer time period established by the Board.

Appendix A

CAB Form 222

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

FOREIGN AIR CARRIER APPLICATION FOR
STATEMENT OF AUTHORIZATION FOR
INTERMODAL CARGO SERVICES

DO NOT WRITE - FOR
OFFICIAL USE ONLY

TO: CIVIL AERONAUTICS BOARD
ATTENTION: Regulatory Affairs Division
Bureau of International Aviation
Washington, D.C. 20428

Application is made for a Statement of Authorization to conduct intermodal cargo services under provisions of the applicants' foreign air carrier permit and Economic Regulation Part 222.

☐ Initial Application
☐ Change of Name/Address/Nationality
☐ Application for Removal of conditions

1. Name of Applicant:

Nationality:

2. Send Authorization to:
(Name and Address)

3. (a) estimated annual tonnage of cargo to be shipped by surface transportation: ________

(b) percentage of total air cargo to be shiped by surface transportation beyond 35-mile pick-up and delivery zone.

4. Area in the United States to be served by surface transportation

CERTIFICATION

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge.

Signature: ________

Date: ________ Name: ________ (please type)

Place: ________ Title: ________ (see note)

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary, or Treasurer of a corporation, or a partner or owner of other non-corporate applicants.

FOR CAB USE ONLY

Special conditions or limitations/reasons for disapproval/rejection/findings.

PART 223—FREE AND REDUCED-RATE TRANSPORTATION

Subpart A—General Provisions

Sec.
223.1 Definitions.
223.2 Exemption from section 401 of the Act.
223.3 Mandatory free transportation.
223.4 Transferability of passes.
223.5 Responsibility of agencies.
223.6 Carrier's rules.

Subpart B—Domestic Travel

223.11 Free and reduced-rate transportation permitted.

Subpart C—International Travel

223.21 Free and reduced-rate transportation authorized by statute or regulation.
223.22 Other persons to whom free and reduced-rate transportation may be furnished.
223.23 Applications for authority to carry other persons.
223.24 Transportation of empty mail bags.
223.25 List of affiliates.

AUTHORITY: Secs. 204, 403, 404, 405(j), 407, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 766, 771, 49 U.S.C. 1325, 1373, 1374, 1375, 1377, 1386, sec. 2 of the Postal Reorganization Act, 84 Stat. 767, 39 U.S.C. 5007.

SOURCE: ER-1371, 48 FR 57118, Dec. 28, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 223.1 Definitions.

As used in this part, unless the context otherwise requires:

An "affiliate" of a carrier means a person:

(a) Who controls that carrier, or is controlled by that carrier or by another person who controls or is controlled by that carrier; and

(b) Whose principal business in purpose or in fact is:

(1) The holding of stock in one or more carriers;

(2) Transportation by air or the sale of tickets therefor;

(3) The operation of one or more airports, one or more of which are used by that carrier or by another carrier who controls or is controlled by that carrier or that is under common control with that carrier by another person; or

(4) Activities related to the transportation by air conducted by that carrier or by another carrier that controls or is controlled by that carrier or which is under common control with that carrier by another person.

"Air carrier" means the holder of a certificate of public convenience and necessity issued by the Board under section 401 of the Act authorizing the carriage of persons.

"Attendant" means any person required by a handicapped person in order to travel, whether or not that person's services are required while the handicapped passenger is in an aircraft.

"Carrier" means:

(a) An air carrier;

(b) An all-cargo air carrier operating under section 401 or section 418 of the Act;

(c) A foreign air carrier;

(d) An intrastate carrier;

(e) An air taxi (including a commuter air carrier) operating under Parts 294 or 298 of this chapter; and

(f) Any person operating as a common carrier by air, or in the carriage of mail by air, or conducting transportation by air, in a foreign country.

"Control," as used in this section, means the beneficial ownership of more than 40 percent of outstanding capital stock unless, ownership of more than 40 percent of outstanding capital stock unless, in a specific case, the Board determines under section 408 of the Act that control does not exist. Control may be direct or by or through one or more intermediate subsidiaries likewise controlled or controlling through beneficial ownership of more than 40 percent of outstanding voting capital stock.

"Delivery flight" means a flight from a point in the United States where a carrier has taken delivery of a newly manufactured aircraft to any point or points on its route system.

"Foreign air carrier" means the holder of a permit issued by the Board under section 402 of the Act authorizing the carriage of persons.

"Free transportation" means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by that carrier) in air transportation without compensation therefor.

"Handicapped passenger" means any person who has a physical or mental impairment (other than drug addiction or alcoholism), that substantially limits one or more major life activities.

"Inaugural flight" means a flight on an aircraft type being introduced by a carrier for the first time on a route, even if that aircraft type has been used by that carrier on other routes or on that route by other carriers.

"Pass" means a written authorization, other than actual ticket stock, issued by a carrier for free or reduced-rate transportation of persons or property.

"Reduced-rate transportation" means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by such carrier) in air transportation for a compensation less than that specified in the tariffs of that carrier on file with the Board and otherwise applicable to such carriage.

"Retired" means:

(a) With respect to carrier directors, officers, and employees, persons receiving retirement benefits from any carrier;

(b) With respect to the general public, persons not regularly working at a full-time paying job, and not intending to do so in the future.

§ 223.2 Exemption from section 401 of the Act.

(a) Any all-cargo carrier is exempted from section 401 of the Act to the extent necessary to carry, for purposes of in-flight observation, technical representatives of companies that have been engaged in the manufacture, development, or testing of aircraft or aircraft equipment.

(b) Every carrier providing transportation under this section shall also comply with the applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

§ 223.3 Mandatory free transportation.

Every air carrier shall carry, without charge, on any aircraft that it operates, the following persons:

(a) Security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration;

(b) Safety inspectors of the National Transportation Safety Board or of the Federal Aviation Administration who have been assigned to the duty of inspecting during flight such aircraft or its equipment, route facilities, operational procedures, or airman competency upon the exhibition of credentials or a certificate from the agency involved in authorizing such transportation; and

(c) Postal employees on duty in charge of the mails or traveling to or from such duty, upon the exhibition of the credentials issued by the Postmaster General.

§ 223.4 Transferability of passes.

Any pass authorizing free or reduced-rate transportation issued by a carrier may be made transferable to the extent specified by the granting carrier.

§ 223.5 Responsibility of agencies.

The Federal Aviation Administration, National Transportation Safety Board, National Weather Service, and the Postal Service shall be responsible for the following:

(a) The issuance of any credentials or certificates to their personnel eligible for free or reduced-rate transportation under this part; and

(b) The promulgation of any internal rules that are necessary to obtain compliance by such personnel with this part.

§ 223.6 Carrier's rules.

(a) Each air carrier and foreign air carrier shall maintain at its principal office either a copy or all instructions to its employees and of all company rules governing its practice in connection with the issuance and interchange of free and reduced-rate transportation passes or a statement describing those practices.

(b) The rules or statement required by this section shall, at a minimum, include the following:

(1) The titles of its officials upon whose authorizations passes may be issued;

(2) The titles of other officials who are authorized by these officials to countersign passes on their behalf, and the extent of the authority granted to them; and

(3) The titles of persons who are authorized to request passes from other carriers.

(c) The rules, instructions, or statement required by this section shall be furnished to the Board upon request or to a member of the public upon payment of a reasonable charge for this service.

(Approved by the Office of Management and Budget under control number 3024-0002)

Subpart B—Domestic Travel

§ 223.11 Free and reduced-rate transportation permitted.

Air carriers may charge any rate or fare for interstate and overseas air transportation.

Subpart C—International Travel

§ 223.21 Free and reduced-rate transportation authorized by statute or regulation.

(a) Any air carrier or foreign air carrier may provide free or reduced-rate foreign air transportation to any classes of persons specifically named in section 403(b) of the Act or free transportation to those named in § 375.35 of this chapter.

(b) Air carriers and foreign air carriers may offer reduced fares for foreign air transportation to ministers of religion, the elderly, retired, and handicapped passengers, and to attendants required by handicapped passengers, but shall file tariffs for such fares. Carriers may establish reasonable tariff rules to assist in identifying those who qualify for reduced fares.

§ 223.22 Other persons to whom free and reduced-rate transportation may be furnished.

Air carriers and foreign air carriers are exempted from sections 403 and 404(b) of the Act and Part 221 of this chapter to the extent necessary to provide free or reduced-rate foreign air transportation, including passes, to the following:

(a) Directors, officers, employees, and retirees and members of their immediate families, of any carrier or of any affiliate of such carrier, subject to the requirements of § 223.25.

(b) Persons to whom the carrier is required to furnish such transportation by law or government directive or by a contract or agreement between the carrier and the government of any country served by the carrier. The Board may, without prior notice, direct the carrier to file a tariff covering such transportation if it finds that the law or government directive in question requires the provision of such transportation. This transportation may be provided only if:

(1) The contract or agreement is filed with the Board, and it is not disapproved by the Board; and

(2) The law or government directive does not require the furnishing of such transportation to the general public or any segment thereof.

(c) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purposes of in-flight observation, and subject to applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

(d) Any person in return for goods or services provided by such person whether the transportation is used by that person or any designee of such person;

(e) Persons engaged in promoting transportation and their immediate families, when such transportation is undertaken for a promotional purpose;

(f) Persons being transported on an inaugural flight or delivery flight of the carrier except that, in the case of delivery flights, this exemption extends only to free, and not reduced-rate, transportation;

(g) Any law-enforcement official, including any person who has the duty of guarding government officials traveling on official business against unlawful interference;

(h) As compensation to persons that file a complaint or claim against the carrier;

(i) Charitable organizations; and

(j) Any person in an aviation-related occupation when the transportation is provided for the purpose of technical in-flight observation.

§ 223.23 Applications for authority to carry other persons.

(a) Any air carrier or foreign air carrier desiring special authorization to provide free or reduced-rate foreign air transportation to persons to whom the carrier would not otherwise be authorized to furnish such transportation under the previous provisions of this part may apply to the Board, by letter or other writing, for such authorization.

(b) The application shall include the following information:

(1) The identity of the persons to whom the transportation is to be furnished;

(2) The points between which the transportation is to be furnished;

(3) The approximate time of departure; and

(4) The carrier's reasons for desiring to furnish such transportation.

(c) No transportation for which approval is required shall be furnished by the carrier until that approval is received by the carrier.

(Approved by the Office of Management and Budget under control number 3024-0002)

§ 223.24 Transportation of empty mail bags.

Any carrier authorized to engage in foreign air transportation may transport in foreign air transportation empty air mail bags from any country to the country of origin of such bags, free of charge, on a voluntary space-available basis.

§ 223.25 List of affiliates.

(a) Each carrier shall maintain at its principal office a list containing all of that carrier's affiliates, showing the exact relationship of each affiliate to the carrier.

(b) No pass may be issued under § 223.22(a) to a director, officer, employee, or members of their immediate family, of any affiliate, unless that affiliate is on the list required by paragraph (a) of this section.

(c) The list required by paragraph (a) of this section shall be furnished to the Board upon request.

(Approved by the Office of Management and Budget under control number 3024-0002)

PART 228—EMBARGOES ON PROPERTY

Subpart A—General Provisions

Sec.
228.1 Definitions.
228.2 Duration of embargo.
228.3 Notice of embargo.
228.4 Contents of embargo notice.
228.5 Nature of public notice.
228.6 Notice of modification, termination or extension of embargo.
228.7 Tariff limitations.

Subpart B—Application To Extend Embargoes

228.20 Contents of application.
228.21 Filing of application.
228.22 Service.
228.23 Answers by interested persons and replies thereto.
228.24 Disposition.
APPENDIX—EMBARGO NOTICE

AUTHORITY: Secs. 204(a), 401(j), 403(a), 404, and 1002(b), Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 as amended by 76 Stat. 143, 82 Stat. 867, 72 Stat. 758 as amended by 74 Stat. 445, 72 Stat. 760, 788; 49 U.S.C. 1324, 1371, 1373, 1374, and 1482, unless otherwise noted.

SOURCE: ER-789, 38 FR 4243, Feb. 12, 1973, unless otherwise noted.

Subpart A—General Provisions

§ 228.1 Definitions.

"Embargo" means the temporary refusal by an air carrier to accept for transportation over any route or segment thereof, or to or from any area or point of a connecting carrier, any commodity, type or class of property (other than passenger baggage) duly tendered, where, because of lack of facilities or personnel, or because it is required to give preference to other traffic entitled to priority, or because of other compelling reasons not within the control of the carrier, it is temporarily unable to perform all of the authorized transportation service requested of it. As used herein, the term "embargo" does not include: (1) Refusal to accept property for transportation in accordance with restrictions and limitations in the tariff or certificate of an air carrier; (2) refusal to accept property for domestic transportation in accordance with the exemption in § 291.31(a)(2) of this chapter; (3) an involuntary postponement or interruption of service under § 323.14 of this chapter.

(Secs. 204, 407, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, 771 (49 U.S.C. 1324, 1377, 1386))

[ER-1131, 44 FR 36024, June 20, 1979]

§ 228.2 Duration of embargo.

(a) Except as provided herein no embargo imposed under the provisions of this part shall extend beyond 30 days from the initial effective date of such embargo.

(b) Any air carrier who finds it necessary to continue in effect any embargo imposed under the provisions of this part for more than 30 days from the initial effective date of such embargo may file an application under Subpart B of this part for authority to extend such embargo for more than 30 days. Pending the disposition by the Board of such application, the 30-day limitation prescribed in paragraph (a) of this section shall not apply.

(c) This part shall not be construed as relieving any air carrier, during the initial 30-day embargo period prescribed herein and for any period that such embargo is automatically extended, of any duty otherwise imposed upon it to furnish authorized transportation service or to observe all requirements of the Federal Aviation Act, and the rules and regulations thereunder.

§ 228.3 Notice of embargo.

Whenever any certificated air carrier finds that it will be necessary for it to impose an embargo on the acceptance of any shipment, said air carrier shall give public notice thereof immediately, except when such embargo is authorized by order of the Board. When an embargo has been extended beyond the period specified in the notice, or beyond the initial 30-day period pending the disposition of an application for extension pursuant to § 228.2, a supplemental notice to that effect shall be given.

§ 228.4 Contents of embargo notice.

The contents of the notice of embargo required by § 228.3 shall be in the form prescribed in the appendix attached to this Part 228, shall be executed by the Embargo Officer of the air carrier, and shall contain the following information:

(a) The serial number of the embargo notice. Each embargo notice shall be numbered in ascending sequential order.

(b) The name of the carrier declaring the embargo and its principal place of business.

(c) The issue, effective, and expiration dates of the embargo.

(d) Whether the embargo is applicable to all commodities, and if not, a description of the particular commodity, commodities, items or classes of commodities to be embargoed.

(e) Whether all points on the carrier's routes are embargoed, and if not, a designation of the origination and destination point, geographic area, and routes affected by the embargo.

(f) If the embargo is applicable only to property transported on certain types of equipment, the equipment types and flights subject to such embargo shall also be specified.

(g) An explicit statement of the grounds which the carrier claims to justify the imposition of the embargo.

(h) A note which reads as follows:

> If the embargoing carrier shall find it necessary to continue in effect the embargo described in this notice beyond the date of expiration specified herein, it shall file an application with the Civil Aeronautics Board for authority to extend such embargo.

Should such application be filed, any interested person may, within 7 days after the filing, file with the CAB and serve upon the carrier a written answer in opposition to or in support of such application, together with the reasons why the application should be denied or granted. Any person interested in receiving a copy of any such application for extension as may be filed by the carrier, or in receiving notification of any modification of the embargo, or of termination thereof before, or of extension thereof beyond, the date of expiration specified herein, should so advise the undersigned Embargo Officer promptly.

Any interested person may make an informal complaint concerning the embargo described in this notice by addressing such complaint to the Director, Office of the Consumer Advocate, Civil Aeronautics Board, Washington, D.C. 20428. In addition, any interested person may make a formal complaint against such embargo (see 14 CFR 302.201).

[ER-789, 38 FR 4243, Feb. 12, 1973, as amended by ER-895, 40 FR 2797, Jan. 16, 1975]

§ 228.5 Nature of public notice.

The embargo notice required by this part shall be posted in a conspicuous and public place at each of the carrier's offices where property of the kind affected by the embargo can reasonably be expected to be received. Such notice shall be posted immediately and, unless circumstances beyond the control of the air carrier necessitate a later posting thereof, in no event less than 24 hours before the embargo becomes effective. Upon posting of said notice, one copy thereof shall be sent to each connecting carrier which may be affected by the embargo and two copies shall be mailed to the Tariffs Section of the Civil Aeronautics Board at Washington, D.C. 20428. When a notice is not posted 24 hours or more before an embargo takes effect, the air carrier shall attach to the copies mailed to the Board a brief explanation of the circumstances which necessitated the late posting of the notice.

§ 228.6 Notice of modification, termination, or extension of embargo.

In any case where the embargo is modified, terminated earlier than, or extended beyond, the expiration date set forth in the embargo notice, a notice of the modification, termination, or extension of the embargo shall be posted, and copies thereof shall be sent to each connecting carrier, local official, and other person, upon whom an application for extension is required to be served by § 228.22, and shall be filed with the Board in the same manner and to the same extent as the original notice of embargo.

§ 228.7 Tariff limitations.

This part shall not be construed as precluding any carrier from filing an appropriate tariff where the carrier finds it necessary, on a long-term or permanent basis, to limit the scope of its holding out of authorized freight services.

Subpart B—Application To Extend Embargoes

§ 228.20 Contents of application.

An application to extend an embargo beyond 30 days after its effective date shall contain all of the information specified in § 228.4, and, in addition, the following:

(a) An explicit statement of the facts relied upon to establish that, for one or more of the reasons set forth in § 228.1, the applicant is unable to perform the specified transportation service for more than 30 days, and any other matter which the applicant desires the Board to officially notice; and, by affidavit, such other facts as are alleged in support of the application.

(b) A statement that any interested person may file an answer in opposition to or in support of the application within 7 days after the filing of the application.

(c) A list of the persons upon whom copies of such application were served in accordance with § 228.22.

§ 228.21 Filing of application.

An executed original and 19 copies of an application made pursuant to § 228.20 shall be filed with the Docket Section of the Civil Aeronautics Board, Washington, D.C. If such application is filed later than 10 days following the initial effective date of the embargo, it will be accepted only if it includes, or is accompanied by, a showing of good cause why such application could not have been filed earlier.

§ 228.22 Service.

(a) A copy of each application filed and of each answer addressed thereto pursuant to the provisions of this subpart, shall be served personally, or by registered or certified mail, upon such persons as the Board may designate in a particular case. A copy of each application shall also be so served on the following persons in all cases:

(1) Each connecting carrier required to be served with an embargo notice pursuant to § 228.5.

(2) The chief executive of the city, town, or other unit of local government at any point located in the United States or any possession thereof where property of the kind affected by the embargo can reasonably be expected to be received.

(3) Any person who has made an appropriate request of the carrier's Embargo Officer.

(b) A copy of such application shall also be posted in a conspicuous place at each of the carrier's offices where property of the kind effected by the embargo can reasonably be expected to be received.

§ 228.23 Answers by interested persons and replies thereto.

(a) Any interested person may file with the Board, and serve upon the applicant, a written answer in opposition to or in support of an application filed pursuant to § 228.21, within 7 days after the filing thereof. Such answers shall set forth in detail the reasons why the application should be denied or granted, a statement of any other matters which it is desired that the Board shall officially notice, and, by affidavit, such other facts as are alleged in support of the answer. An executed original and 19 copies of such answer shall be filed with the Docket Section of the Board.

(b) Within 5 days from the date of service of an answer, the applicant may file a reply thereto and shall serve it upon any person who has filed an answer. An executed original and 19 copies of such reply shall be filed with the Docket Section.

§ 228.24 Disposition.

(a) If no answer is filed, the embargo is extended for the period requested in the application, unless stayed by the Board.

(b) If any answer is filed, the Board may issue an order extending an embargo if the carrier is unable to carry the property for one of the reasons in § 228.1.

(c) Where the public interest so requires, the Board may act on an application without waiting for answers to be filed.

(Secs. 204, 407, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, 771, (49 U.S.C. 1324, 1377, 1386))

[ER-1131, 44 FR 36024, June 20, 1979]

APPENDIX—EMBARGO NOTICE

Issue date ——————————
Effective date ——————————
Embargo Notice No. ——————————
Expiration date ——————————

1. Name and address of carrier. ——————————

2. Description of embargoed commodities.

3. Points affected by embargo. ——————————

4. Equipment type(s) and flight(s) subject to embargo. ——————————

5. Reasons for embargo: ——————————

Embargo Officer:

Name

Title

Address

NOTE: If the embargoing carrier shall find it necessary to continue in effect the embargo described in this notice beyond the date of expiration specified herein, it shall file an application with the Civil Aeronautics Board for authority to extend such embargo. Should such application be filed, any interested person may, within 7 days after the filing, file with the CAB and serve upon the carrier a written answer in opposition to or in support of such application, together with the reasons why the application should be denied or granted. Any person interested in receiving a copy of any such application for extension as may be filed by the carrier, or in receiving notification of any modification of the embargo, or of termination thereof before, or of extension thereof beyond, the date of expiration specified therein, should so advise the undersigned Embargo Officer promptly.

Any interested person may make an informal complaint concerning the embargo described in this notice by addressing such complaint to the Director, Office of the Consumer Advocate, Civil Aeronautics Board, Washington, D.C. 20428. In addition, any interested person may make a formal complaint against such embargo (see 14 CFR 302.201).

[ER-789, 38 FR 4243, Feb. 12, 1973, as amended by ER-913, 40 FR 26023, June 20, 1975]

PART 231—EXEMPTION FROM SCHEDULE FILING

Sec.
231.1 Applicability.
231.2 Exemption.

§ 231.1 Applicability.

This part applies to all air carriers.

(Secs. 204, 405, 1601, Pub. L. 85-726, as amended, 72 Stat. 743, 760, 92 Stat. 1744; 49 U.S.C. 1324, 1375, 1551)

[ER-1298, 47 FR 40538, Sept. 15, 1982]

§ 231.2 Exemption.

Air carriers are hereby exempted from the requirements of the first sentence of section 405(b) of the Act.

NOTE: The first sentence of section 405(b) reads as follows: "Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure of each such point."

(Secs. 204, 405, 1601, Pub. L. 85-726, as amended, 72 Stat. 743, 760, 92 Stat. 1744; 49 U.S.C. 1324, 1375, 1551)

[ER-1298, 47 FR 40538, Sept. 15, 1982]

PART 232—TRANSPORTATION OF MAIL, REVIEW OF ORDERS OF POSTMASTER GENERAL

Sec.
232.1 Applications for review.
232.2 Answers to applications for review.
232.3 Replies to answers to applications for review.
232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.
232.5 Filing and service of applications, answers, and replies.

AUTHORITY: Secs. 204 and 405 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760; 49 U.S.C. 1324, 1375.

SOURCE: 41 FR 49479, Nov. 9, 1976, unless otherwise noted.

§ 232.1 Applications for review.

(a) Any person who would be aggrieved by an order of the Postmaster General issued under and within the meaning of section 405(b) of the Act may, within not more than 10 days after the issuance of such order, apply to the Board for a review thereof.

(b) An application for review filed under this part shall be made in writing and shall be conspicuously entitled Application for Review of Order of the Postmaster General under section 405(b) of the Act. Except as otherwise provided in paragraph (c) of this section, such application for review shall specify:

(1) The schedule affected and identity of the order complained of;

(2) The manner in which the applicant is or would be aggrieved by the order;

(3) The relief sought;

(4) The facts relied upon to establish that the public convenience and necessity require that such order be amended, revised, suspended, or canceled by the Board;

(5) An estimate of the total economic impact (including nonmail revenues)

on the carrier of complying with the Postmaster General's order;

(6) A history of the flight or flights in question and any predecessor flights cooperated in the market at or about the same hours, including when they were first operated and whether they have been operated continuously since that time: *Provided*, That this history need not extend beyond the last three years;

(7) A detailed statement of the reasons for the schedule change, including copies of any economic data considered by carrier management in reaching that determination;

(8) Any other schedule changes in the affected market which accompany the schedule change in question, or a statement to the effect that there are no such changes;

(9) Monthly load-factor data on the flight or flights in question for the most recent twelve-month period;

(10) Profit and loss data for the flight or flights in question for the most recent twelve-month period, provided that the data be submitted on a fully allocated cost by CAB functional account number or by some other method in which costs are determined on a fully allocated basis and which is explained in complete detail; and

(11) A statement indicating whether the carrier is willing to seatload sack mail on the flight or flights in question.

(c) Where the application is for review of an order which does not involve disapproval, alteration, or amendment of a change or changes which a carrier sought to make in its own schedule(s), the application need not include items 6 through 11, inclusive, specified in paragraph (b) of this section.

§ 232.2 Answers to applications for review.

(a) Any interested person may, within not more than ten days after the filing of an application for review, serve and file with the Board an answer in opposition to, or in support of, such applications. Such answer shall set forth the economic data and other facts upon which it is based.

(b) An answer of the Postmaster General or U.S. Postal Service shall contain the following particular information, where applicable:

(1) The Postal Service's critical time frame for the movement of the mail in question together with a detailed explanation of the operational factors which support that estimate;

(2) The alternate air and surface services (including air taxi service) available in the market in question together with a statement of the costs of using such alternate services and, where appropriate, an explanation of why such services are unacceptable;

(3) An estimate of the average amount and expected actual density of mail which will be tendered to the carrier if the order in question is upheld;

(4) An estimate of the amount and type of containers which will be tendered to the carrier if the order in question is upheld;

(5) The volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question;

(6) An estimate of the volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question which could be accommodated on other flights serving the market without significant impairment of service under the mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed; and

(7) An estimate of the impact of the flight or flights in question on mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed.

§ 232.3 Replies to answers to applications for review.

Any interested person may, within not more than seven days after the filing of an answer to an application for review, serve and file with the Board a reply in opposition to, or in support of, such answer.

§ 232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.

(a) Any person who would be aggrieved by an order of the Postmaster General within the meaning of section

405(b) of the Act may, within not more than four calendar days after the issuance of such order, apply to the Board for a postponement of the effective date of that order pending review: *Provided,* That if the final day of the four day period is a Saturday, Sunday, or holiday for the Board, the application may be filed with the Board no later than the end of the next day which is neither a Saturday, Sunday, or holiday.

(b) An application for postponement of the effective date filed under this part may be made in writing or by telegram, and shall be conspicuously entitled Application for Postponement of the Effective Date of Order of the Postmaster General Pending Review Under section 405(b) of the Act. Such application for postponement shall specify:

(1) The schedule affected and identity of the order complained of;

(2) The manner in which the applicant is or would be aggrieved by the order;

(3) The relief which will be sought;

(4) That the applicant intends to file a timely application for review of the order under § 232.1; and

(5) A summary of the justification and facts relied upon to establish that the stay should be granted.

(c) Any interested person may, within not more than four calendar days after the service of an application for postponement of the effective date, serve and file with the Board an answer in opposition to, or in support of, the application: *Provided,* That if the final day of the four day period is a Saturday, Sunday, or holiday for the Board, the application may be filed with the Board no later than the end of the next day which is neither a Saturday, Sunday, or holiday: *Provided further, however,* That the Board need not consider any answer filed later than eight calendar days after issuance of the Postmaster General's order.

§ 232.5 Filing and service of applications, answers, and replies.

(a) An application, answer or reply filed hereunder shall be deemed to have been filed on the date on which it is actually received by the Board at its offices in Washington, D.C.

(b) At the time a written or telegraphic application, answer, or reply is filed under this part, a copy thereof shall be served by personal service, registered mail, or telegraph upon the Postmaster General and upon the air carrier operating or ordered to operate the mail service in question. Except in the case of telegraphic delivery each copy so served shall be accompanied by a letter of transmittal stating that such service is being made pursuant to this section. In the case of telegraphic delivery the copy shall be accompanied by a telegraphic statement that service is being made pursuant to this section.

(c) The execution, number of copies, and verification of a written application, answer, or reply filed under this part, and the formal specifications of papers included in such application, answer, or reply shall be in accordance with the requirements of the Rules of Practice relating to applications generally (see Part 302 of this chapter).

PART 235—REINVESTMENT OF GAINS DERIVED FROM THE SALE OR OTHER DISPOSITION OF FLIGHT EQUIPMENT

Sec.

235.1 Definitions.
235.2 Eligibility for benefits of section 406(d).
235.3 Reinvestment of gains.
235.4 Notice to Board.
235.5 Re-equipment fund.

AUTHORITY: Secs. 204, 406, 72 Stat. 743; 49 U.S.C. 1324, 1376.

SOURCE: ER-276, 24 FR 5602, July 11, 1959, unless otherwise noted.

§ 235.1 Definitions.

For the purpose of this part:

(a) "Applicable expenses" means all direct and indirect expenses attributable to the offering, preparation or presentation of the flight equipment for sale or delivery, including but not limited to:

(1) Advertising expense;

(2) Broker's and salesman's expense and commissions;

(3) Packaging expense and other costs incident to preparation for shipment;

(4) Reconditioning, refurnishing, painting and other similar expenses;

(5) Transportation and shipping expenses;

(6) Overhaul expense;

(7) Legal fees and other administrative expenses.

(b) "Applicable taxes" means all federal, state, territorial and foreign taxes paid by or refunded to the carrier with respect to each gain or loss upon retirement of flight equipment, including capital gains taxes, deductions for capital losses, transfer taxes and documentary taxes.

(c) "Date of sale or other disposition" means the date on which the transfer or disposition of the flight equipment is final and complete and nothing remains to be done by the air carrier selling or disposing of the flight equipment to entitle it to payment of the consideration or value, regardless of the period over which actual payments are to be made.

(d) "Flight equipment" means airframes, aircraft engines, aircraft propellers, aircraft communications and navigational equipment, miscellaneous flight equipment, improvements to leased flight equipment and flight equipment rotable parts and assemblies within the meaning of Part 241 (Accounts 1601 through 1608 and 1701 through 1708) of this subchapter.

(e) "Gain" means the amount by which the total proceeds (less applicable expenses and taxes) realized from the sale or other disposition of one or more units of flight equipment in a single transaction exceeds the total depreciated cost of the units of flight equipment sold or disposed of in that transaction: *Provided, however,* That no gain shall be considered as realized in the case of an exchange of like equipment or in the case of a recovery from the carrier's insurer on account of the loss or destruction of an aircraft, where the insurer exercises an option under the insurance policy to replace such aircraft in kind.

(f) "Investment in flight equipment" means the acquisition of flight equipment in any manner including purchase, exchange, construction, additions and improvements to flight equipment, or payment on account thereof.

(g) "Re-equipment fund" means cash or its equivalent and other liquid assets such as an obligation of the purchaser, a special bank deposit or investment in securities, segregated from the general assets of the air carrier and held for the exclusive purposes of purchasing or constructing flight equipment or retiring debt contracted for the purchase or construction of flight equipment.

(h) "Sale or other disposition" means the retirement of flight equipment by any means, including sale, exchange, abandonment, demolition, or other disposal of flight equipment.

§ 235.2 Eligibility for benefits of section 406(d).

Air carriers seeking to obtain the benefits of section 406(d) of the Federal Aviation Act of 1958 with respect to all or part of any gain derived from the sale or other disposition of flight equipment, shall comply with the statutory requirements in the manner provided in this part.

§ 235.3 Reinvestment of gains.

The gain from the sale or other disposition of flight equipment shall be applied to investment in flight equipment or to the retirement of debt contracted for investment in flight equipment, or shall be deposited for such purposes in a re-equipment fund not later than 60 days after the date of such sale or other disposition and before the date on which the air carrier files the schedules required by § 235.4. The gain may not be invested in flight equipment delivered to the carrier prior to April 6, 1956. A gain realized prior to the adoption of this part shall be applied or deposited in the manner described herein not later than 60 days after the adoption of the part.

§ 235.4 Notice to Board.

Form 41 Schedule B-8(a) shall be filed by the air carrier, in triplicate, with the Board not later than 60 days after the date of the sale or other disposition of flight equipment from which the air carrier derived a gain. Form 41 Schedule B-7(a) shall also be filed, in triplicate, within the same period if the carrier has applied the gain for investment in flight equipment or to the retirement of debt contracted for investment in flight equipment. If the date of the sale or other disposition was on or after April 6, 1956, but prior to the date of the adoption of this part, the appropriate schedule(s) shall be filed not later than 60 days after the adoption of this part.

§ 235.5 Re-equipment fund.

(a) Any gains deposited in a re-equipment fund shall be applied to investment in flight equipment, or to the retirement of debt contracted for investment in flight equipment, not later than two years after the date of the sale or other disposition of flight equipment from which the air carrier derived the gain, unless the Board, for good cause shown, grants an extension of such time limitation. Gain invested in flight equipment delivered to the carrier prior to April 6, 1956, is not eligible for the benefits of section 406(d).

(b) Not later than 10 days after any change in the assets making up the re-equipment fund, the air carrier shall report such change in an amended Schedule B-8(a). Not later than 60 days after the application of the gain deposited in a re-equipment fund, the air carrier shall file Form 41 Schedule B-7(a).

PART 240—INSPECTION OF ACCOUNTS AND PROPERTY

Sec.
240.1 Interpretation.
240.2 Obligation of air carriers, foreign air carriers, and ticket agents.

§ 240.1 Interpretation.

(a) In the exercise of the authority granted by section 407(e) of the Act, the authority of any special agent or auditor to inspect and examine lands, buildings, equipment, accounts, records, memorandums, papers or correspondence shall include the authority to make such notes and copies thereof as he deems appropriate.

(b) The term "special agent" and "auditor" are construed to mean any employee of the Bureau of Enforcement and any other employee of the Board specifically designated by it or by the Director, Office of Facilities and Operations.

(c) The issuance in the form set forth below of an identification card and credentials to any such employee shall be construed to be an order and direction of the Board to such individual to inspect and examine lands, buildings, equipment, accounts, records, and memorandums in accordance with the authority conferred on the Board by the Act.

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

Number ______
Expires ______

[photo]

______
Signature

This is to certify that______, whose signature and photograph appear hereon is a duly designated ______

______ of the Civil Aeronautics Board and is authorized and directed to perform the duties of said office in accordance with the laws of the United States and regulations thereunder, and his authority will be respected accordingly.

By authority of the Civil Aeronautics Board.

______
Secretary

CIVIL AERONAUTICS BOARD

Name ______
Date Issued ______
Number ______
Height ______
Weight ______
Hair ______
Eyes ______

Date of Birth ______________________

The holder hereof is authorized to investigate violations of the Federal Aviation Act, as amended, collect evidence in cases in which the regulatory authority of the Civil Aeronautics Board is or may be involved and perform other duties imposed upon him by law.

Under the Federal Aviation Act and Part 240 of the Economic Regulations of the Civil Aeronautics Board (14 CFR Part 240), the duly accredited special agents and auditors of the Board are empowered at all times to obtain access to all lands, buildings and equipment of any air carrier or foreign air carrier and to inspect, examine, and make notes and copies of all accounts, records, memorandums, documents, papers and correspondence kept or required to be kept by any air carrier, foreign air carrier or ticket agent.

The issuance of these credentials to the holder hereof constitutes an order and direction on the part of the Civil Aeronautics Board to such individual to carry out these duties as aforesaid and as more fully described in Part 240 of the Board's Economic Regulations.

Failure to honor these credentials will result in penalties as provided by law.

UNITED STATES OF AMERICA,
CIVIL AERONAUTICS BOARD,
WASHINGTON, D.C.

(Secs. 204, 407, 701, 72 Stat. 743; 49 U.S.C. 1324, 1377, 1441)

[ER-822, 38 FR 26601, Sept. 24, 1973, as amended by ER-914, 40 FR 27017, June 26, 1975; ER-941, 40 FR 58850, Dec. 19, 1975]

§ 240.2 Obligation of air carriers, foreign air carriers, and ticket agents.

Upon the demand of a special agent or auditor of the Board, and upon the presentation of the identification card and credentials issued to him in accordance with this part: (a) Any air carrier or foreign air carrier shall forthwith permit such special agent or auditor to inspect and examine all lands, buildings and equipment; (b) any air carrier, foreign air carrier or ticket agent shall forthwith permit such special agent or auditor to inspect and examine all accounts, records, memorandums, documents, papers and correspondence now or hereafter existing, and kept or required to be kept by the air carrier, foreign air carrier, or ticket agent, and shall permit such special agent or auditor to make such notes and copies thereof as he deems appropriate.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; (49 U.S.C. 1324))

[ER-914, 40 FR 27017, June 26, 1975]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR LARGE CERTIFICATED AIR CARRIERS

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AUTHORITY: Sections 101, 204, 401, 402, 403, 404, 407, 411, 416, 417, 901, 902, 1002, 1601, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 758, 766, 769, 774, 783, 788; 76 Stat. 145; 92 Stat. 1744; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1472, 1482, 1551; sec. 43, Pub. L. 95-504, 92 Stat. 1750, 49 U.S.C. 1552.

SOURCE: ER-755, 37 FR 19726, Sept. 21, 1972, unless otherwise noted.

Section 01—Authority Under Which Accounting and Reporting Rules and Regulations are Prescribed and Administered

This Uniform System of Accounts and Reports for Large Certificated Air Carriers is issued, prescribed and administered under the following provisions of the Federal Aviation Act of 1958, as amended (72 Stat. 731, 49 U.S.C. 1301):

GENERAL POWERS

SEC. 204. (a) The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this Act.

FILING OF REPORTS

SEC. 407. (a) The Board is empowered to require annual, monthly, periodical, and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.

DISCLOSURE OF STOCK OWNERSHIP

SEC. 407. (b) Each air carrier shall submit annually, and at such other times as the Board shall require, a list showing the names of each of its stockholders or members holding more than 5 per centum of the entire capital stock or capital, as the case may be, of such air carrier, together with the name of any person for whose account, if other than the holder, such stock is held; and a report setting forth a description of the shares of stock, or other interest, held by such air carrier, or for its account, in persons other than itself.

FORM OF ACCOUNTS

SEC. 407. (d) The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: *Provided*, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

INSPECTION OF ACCOUNTS AND PROPERTY

SEC. 407. (e) The Board shall at all times have access to all lands, buildings, and equipment of any carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers; and it may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda. The provisions of this section shall apply, to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.

CLASSIFICATION

SEC. 416. (a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest.

SAFETY, ECONOMIC AND POSTAL OFFENSES

SEC. 901. (a)(1) Any person who violates (A) any provision of Title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition or limitation of any permit or certificate issued under Title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided*, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of Titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of Titles IV or VII, or any rule, regulation or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under Title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

FAILURE TO FILE REPORTS; FALSIFICATION OF RECORDS

SEC. 902. (e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.

REFUSAL TO TESTIFY

SEC. 902. (g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpena or lawful requirement of the Board or Administrator, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

FILING OF COMPLAINTS AUTHORIZED

SEC. 1002. (a) Any person may file with the Administrator or the Board, as to matters within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Administrator or the Board to investigate the matters complained of. Whenever the Administrator or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. In the case of complaints against a member of the Armed Forces of the United States acting in the performance of his official duties, the Administrator or the Board, as the case may be, shall refer the complaint to the Secretary of the department concerned for action. The Secretary shall, within ninety days after receiving such a complaint, inform the Administrator or the Board of his disposition of the complaint, including a report as to any corrective or disciplinary actions taken.

INVESTIGATIONS ON INITIATIVE OF ADMINISTRATOR OR BOARD

SEC. 1002. (b) The Administrator or Board, with respect to matters within their respective jurisdictions, is empowered at any time to institute an investigation, on their own initiative, in any case and as to any matter or thing within their respective jurisdictions, concerning which complaint is authorized to be made to or before the Administrator or Board by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Administrator or the Board shall have the same power to proceed with any investigation instituted on their own motion as though it had been appealed to by complaint.

ENTRY OR ORDERS FOR COMPLIANCE WITH ACT

SEC. 1002. (c) If the Administrator or the Board finds, after notice and hearing, in any investigation instituted upon complaint or upon their own initiative, with respect to matters within their jurisdiction, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Administrator or the Board shall issue an appropriate order to compel such person to comply therewith.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1400, 50 FR 11, Jan. 2, 1985]

Section 02—[Reserved]

Section 03—Definitions for Purposes of This System of Accounts and Reports

Account, clearing. An account used as a medium for the temporary accumulation of costs that are redistributed to appropriate applicable accounts.

Acquisition, date of. The date on which the title to owned property or equipment (or the right to use or control the reassignment of leased property or equipment) passes to the air carrier.

Act. The Federal Aviation Act of 1958, as amended.

Addition, property. Additional equipment, land, structures, and other tangible property; extensions of fuel, water, and oil distribution equipment; additions to buildings and other structures; and additional safety devices applied to equipment not previously thus equipped. (See also *Modification.*)

Affiliated group. A combination of companies comprised of the air carrier, any person controlling the air carrier or under common control with the air carrier, and organizational divisions (as defined in sections 1-6) of and persons controlled by the air carrier.

Agent, cargo. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Board) who for compensation or profit: (1) Solicits, obtains, receives or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of property or consolidated shipments of property upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

Agent, ticket. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees, or an air carrier which subcontracts the performance of charter air transportation which it has contracted to perform) who for compensation or profit: (1) Solicits, obtains, receives, or furnishes directly or indirectly passengers or groups of passengers for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of passengers or groups of passengers upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

Agreement. Any oral or written agreement, contract, understanding, or arrangement, and any amendment, revision, modification, renewal, extension, cancellation or termination thereof.

Air carrier. Any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier, charter. An air carrier holding a certificate issued under section 401(d)(3) of the Federal Aviation Act of 1958. For the purposes of this part, carriers with section 401(d)(3) certificates and special operating authorization issued under section 417 of the Act will be regarded as charter carriers.

Air carrier, large certificated. An air carrier holding a certificate issued under section 401 of the Federal Aviation Act of 1958, as amended, that: (1) Operates aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds; or (2) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Air carrier, route. An air carrier holding a Certificate of Public Convenience and Necessity pursuant to section 401(d) (1), (2), (5) or (7) of the Federal Aviation Act of 1958, as amended, authorizing it to engage in air transportation over a route, or routes, designated by the Board.

Air carrier, surviving. An entity (air carrier) which, as the result of a business combination, has acquired the net assets, and carries on the operations of, one or more predecessor air carriers, and which may be newly organized at the time of the combination or may be one of the predecessor air carriers.

Aircraft. Any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

Aircraft days assigned to service—carrier's equipment. The number of days that aircraft owned or acquired through rental or lease (but not interchange) are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under interchange agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days rented or leased to others (for other than interchange) and days in possession but formally withdrawn from air transportation service.

Aircraft days assigned to service—carrier routes—same as *aircraft days assigned to service-carrier's equipment* but excluding the number of days owned or rented equipment are in the possession of others under interchange agreements and including the number of days aircraft of others are in the possession of the air carrier under interchange agreements.

Aircraft, leased (rented). Aircraft obtained from (or furnished to) others under lease or rental arrangements. Leased and rented aircraft do not include those used under interchange agreements designed to provide one-plane service over the routes of the air carriers involved.

Aircraft type. A distinctive model as designated by the manufacturer.

Airport. A landing area regularly used by aircraft for receiving or discharging passengers or cargo.

Airport, alternate. An approved airport to which a flight may proceed if a landing at the airport to which the flight was dispatched becomes inadvisable.

Airport-to-airport distance. The great-circle distance, measured in statute miles, between airports as listed in the the Book of Official C.A.B. Airlines Route Maps and Airport-to-Airport Mileages, published by Airline Tariff Publishers, Inc., from information compiled by the Civil Aeronautics Board. (See Part 247 of the Economic Regulations.)

Air transportation. The carriage by aircraft of persons, property, or mail.

Air transportation, charter. Air transportation authorized pursuant to section 401(d)(3).

Air transportation, supplemental. Air transportation authorized pursuant to section 401(d)(3) of 417 of the Federal Aviation Act of 1958, as amended, or section 7 or 9 of Pub. L. 87-528.

Airworthiness (or Airworthy). When applied to a particular aircraft or component part, it denotes the ability of such aircraft or component part to perform its function satisfactorily through a range of operations determined by the Federal Aviation Administration.

Allocate. To assign an item or group of items of investment, revenue, or cost to an object, activity, process, or operation, in accordance with cost responsibilities, benefits received, or other measure of apportionment.

Allocation, bases of. Bases of distribution whereby revenues, expenses, and/or costs are equitably apportioned among revenue, expense, property and equipment, and other accounts.

Amortization. The gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies or over the period during which it is anticipated the benefit will be realized.

Asset, contingent. An asset the existence, value, or ownership of which depend upon the occurrence or nonoccurrence of a specific event or upon the performance or nonperformance of a specified act.

Associated company. A company in which the accounting air carrier holds 5 percent or more of the outstanding proprietary interest; or a company which holds 5 percent or more of the outstanding proprietary interest of the accounting air carrier; or a company that, directly or through one or more intermediaries, controls or is controlled by, or is under common control with the accounting air carrier. Companies owned or controlled jointly with other air carriers shall be regarded as associated companies for purposes of this system of accounts. (See also *Control.*)

Betterment. Any improvement to property or equipment through the substitution of superior parts for inferior parts retired, the object of which is to make such property more useful or of greater capacity than at the time of acquisition or installation. (See also *Modification.*)

Board. The Civil Aeronautics Board.

Cargo. All traffic other than passengers.

Cargo transported. Cargo on board each flight stage.

Certificated point. A city, place or population center authorized to receive scheduled air service under a *Certificate of Public Convenience and Necessity* or under an exemption issued to an air carrier.

Certificate of Public Convenience and Necessity. A certificate issued to an air carrier under section 401, of the Act, by the Civil Aeronautics Board authorizing the carrier to engage in air transportation.

Company, predecessor. An air carrier whose net assets and operations have been taken over by one or more other air carriers.

Compensation (of personnel). Remuneration to air carrier employees for personal services. Includes salaries, wages, overtime pay, cost-of-living differentials, bonuses, etc., as distinguished from per diem allowances or reimbursement for expenses incurred by personnel for the benefit of the air carrier.

Continental United States. The 48 contiguous States and the District of Columbia.

Control (including the terms *Controlling, Controlled by,* and *Under common control*). The possession, directly or indirectly, of the power positively to direct, or cause the direction of or negate the direction of, the management and policies of a company, whether such power is through one or more intermediary companies or alone or in conjunction with or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract, or any other direct or indirect means.

Controlling person. (See *Person Controlling an air carrier*)

Cost. The amount of cash (or its equivalent) actually paid for property, materials and supplies, and services, including that amount paid to put the property or materials and supplies in readiness for use. It includes such items as transportation charges, installation charges, and customs duties, less any cash or other discounts.

Cost, book. The amount at which an asset is recorded in an account without the deduction of amounts in related allowances or other accounts.

Cost, depreciated. The cost of property and equipment less the related allowances for depreciation.

Cost, removal. The cost of demolishing, dismantling, tearing down, or otherwise removing property and equipment, including the cost of related transportation and handling.

Debt, expense on. Expenses incurred by or for the air carrier in connection with the issuance and sale of evidences of debt (exclusive of the sale of reacquired securities), such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds, certificates of indebtedness, and other commercial paper; specific costs of obtaining governmental authority for issuance and filing notices thereunder; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

Deferred taxes. Tax effects which are deferred for allocation to income tax expense of future periods.

Departures completed, percent scheduled. The percent of scheduled departures that were performed.

Departures completed, scheduled. The number of takeoffs performed at each airport pursuant to published schedules, exclusive of extra sections to scheduled departures.

Departure performed. A takeoff made at an airport.

Departure, scheduled. A takeoff scheduled at an airport, as set forth in published schedules.

Depreciation (of depreciable property and equipment). The loss in service value, not restored by current maintenance, incurred in the course of service from causes known to be in current operation, against which the carrier is not protected by insurance, and the effect of which can be forecast with reasonable accuracy. The causes of depreciation include wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities.

Discount (of securities issued or assumed by the air carrier). The excess of (1) the par or stated value of securities over (2) the then current money value of the consideration received from their sale less the amount included for dividends or for interest accrued.

Equipment. Tangible property other than land, structures, and improvements.

Equity security. Any instrument representing ownership shares (for example, common, preferred, and other capital stock), or the right to acquire (for example, warrants, rights, and call options) or dispose of (for example, put options) ownership shares in an enterprise at fixed or determinable prices. The term does not encompass preferred stock that by its terms either must be redeemed by the issuing enterprise or is redeemable at the option of the investor, nor does it include treasury stock or convertible bonds.

Equivalent unit. A new unit substituted for an existing unit that is worn out, is damaged beyond repair, or has become inadequate in service, the substituted unit having substantially no greater capacity than the unit for which substituted.

Estimated economic life of leased property. The estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended at the inception of the lease, without limitation by the lease term.

Expense, capital stock. Expenses incurred by or for the air carrier in connection with the initial issuance and sale of capital stock (exclusive of the sale of reacquired capital stock), such as fees and commissions paid to promoters, underwriters, brokers, and salesmen; fees for legal services; cost of soliciting subscriptions for capital stock; including fees, commissions, and advertising; specific costs of obtaining governmental authority for issuance and filing notices thereunder; fees and taxes for issuance of capital stock and listing on exchanges; and the cost of preparing, engraving, printing, issuing, and distributing prospectuses and stock certificates.

Exposed net asset position. The excess of assets that are measured or denominated in foreign currency and translated at the current rate over liabilities that are measured or denominated in foreign currency and translated at the current rate.

Exposed net liability position. The excess of liabilities that are measured or denominated in foreign currency and translated at the current rate over assets that are measured or denominated in foreign currency and translated at the current rate.

Express. Property transported by air under published air express tariffs filed with the Civil Aeronautics Board.

Flight, developmental. A flight for (1) the development of a new route either prior or subsequent to certification by the Civil Aeronautics Board; (2) the extension of an existing route; and (3) the integration of a new type of aircraft or service.

Flight, extra section. A flight, conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on a regularly scheduled flight. Flights made in ferrying aircraft to meet schedules, or for similar operational reasons, are not extra sections and are classified as nonrevenue flights even if an occasional shipment, as a matter of special accommodation, is on board.

Flight, ferry. A flight for the purpose of returning an aircraft to base, equipment equalization, or moving an aircraft to and from a maintenance base.

Flight, paid positioning. A flight for the purpose of positioning an empty aircraft in connection with a charter flight for which a specific charge is set forth in a tariff or contract for application directly to the positioning miles operated. Such flights are considered revenue flights for Form 41 reporting purposes.

Flight, personnel training. A flight for the purpose of obtaining flying time for flight personnel or a flight in connection with a personnel training program.

Flight stage. The operation of an aircraft from takeoff to landing. For purposes of classifying flight stages as between "domestic", "territorial", and "international", technical stops are disregarded. (See Stops, technical.)

Foreign currency transactions. Transactions (for example, sales or purchases of goods or services or loans payable or receivable) whose terms are stated in a currency other than the currency of the United States.

Foreign currency translation. The process of expressing amounts denominated or measured in one currency in terms of another currency by use of the exchange rate between the two currencies.

Forward exchange contract (forward contract). An agreement to exchange at a specified future date currencies of different countries at a specified rate (the forward rate). The purpose of a forward contract may be to hedge either a foreign currency commitment or a foreign currency exposed net asset position or exposed net liability position or to speculate in anticipation of a gain.

Freight. Property transported by air under published air freight tariffs filed with the Civil Aeronautics Board.

Group basis (in depreciation accounting). A plan under which (1) depreciation is based upon the application of a single depreciation rate to the total book cost of all property included in a given depreciable property and equipment account or class, despite differences in service life of individual items of property and equipment, (2) the full original cost, less any salvage realized, of an item of depreciable property or equipment retired is charged to the allowance for depreciation regardless of the age of the item, and (3) no gain or loss is recognized on the retirement of individual items of property or equipment.

Horsepower, maximum continuous for reciprocating engines. The brake horsepower developed in standard atmosphere at a specified altitude and under the maximum conditions of crankshaft rotational speed and engine manifold pressure, and approved for use during periods of unrestricted duration.

Horsepower, maximum continuous for turbine engines. The brake horsepower developed at specified altitudes, atmospheric temperatures, and flight speeds and under the maximum conditions of rotor shaft rotational speed and gas temperature, and approved for use during periods of unrestricted duration.

Thrust, maximum continuous for turbine engines. The jet thrust developed at specified altitudes, atmospheric temperatures, and flight speeds and under the maximum conditions of rotor shaft rotational speed and gas temperature, and approved for use during periods of unrestricted duration.

Hours, aircraft. The airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight.

Hours flown, revenue aircraft. The aircraft hours of flights performed in revenue service.

Hours in capitalized projects, aircraft. Aircraft hours applicable to ferrying newly acquired aircraft from the factory, to capitalized extension and development preoperating projects and to other costs which have been capitalized.

Hours per aircraft per day—carrier's equipment, revenue. Average hours of productive use per day in revenue service of reporting carrier's equipment determined by dividing (1) Aircraft days assigned to service—carrier's equipment into (2) Revenue aircraft hours minus Revenue hours on other carrier's interchange equipment plus Total hours by others on the carrier's interchange equipment.

Hours per aircraft per day—carrier's routes, revenue. Average hours of productive use per day in revenue service on reporting carrier's routes determined by dividing (1) Aircraft days assigned to service-carrier's routes into (2) Revenue aircraft hours.

Hours, ramp-to-ramp. The aircraft hours computed from the moment the aircraft first moves under it own power for purposes of flight, until it comes to rest at the next point of landing.

Improvement. An addition or alteration to land, a building, or a unit of equipment that results in a better piece of property, in the sense of greater durability, or in increased productivity or efficiency. (See also *Modification.*)

Income tax expense. The amount of income taxes (whether or not currently payable or refundable) allocable to a period in the determination of net income.

Income taxes. Taxes based on income determined under provisions of the United States Internal Revenue Code and foreign, State, and other taxes (including franchise taxes) based on income.

Insurance, self. The assumption by an air carrier of a risk of loss or liability arising from an accident or other contingent event.

Interchange agreement. An agreement under which aircraft of one air carrier are utilized to provide one-plane service over its own routes and the routes of other air carriers.

Interest rate implicit in the lease. The discount rate that, when applied to (1) the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon, and (2) the unguaranteed residual value accruing to the benefit of the lessor, causes the aggregate present value at the beginning of the lease term to be equal to the fair value of the leased property to the lessor at the inception of the lease, minus any investment tax credit retained by the lessor and expected to be realized by him.

Interperiod tax allocation. The process of apportioning income taxes among periods.

Inventory, perpetual. A book inventory kept in continuous agreement with stock on hand by means of a detailed record.

Investor controlled company (for purposes of applying the equity method of accounting). Any business entity in which the accounting air carrier is able to exercise significant influence over operating and financial policies of the issuing company. Significant influence will be presumed, unless established to the contrary by waiver request, with ownership of 20 percent or more of the outstanding voting capital stock. Ability to exercise influence may be indicated in several ways, such as representation on the Board of Directors, participation in policy-making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency. Investor controlled companies shall also be regarded as associated companies for purposes of this system of accounts (see also Associated company).

Item, delayed. An item relating to transactions that occurred during a prior accounting period and that requires further accounting treatment for a true statement of financial condition or operating results. It includes adjustments of errors in the operating revenue, operating expense, and other income accounts for prior periods.

Lease, capital. A lease which meets one or more of the following criteria: (1) The lease transfers ownership of the property to the lessee by the end of the lease term; (2) the lease contains a bargain purchase option; (3) the lease term is equal to 75 percent or more of the estimated economic life of the leased property; or (4) the present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs such as insurance, maintenance and taxes to be paid by the lessor, including any profit thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him.

Lease, direct financing. Leases other than leveraged leases that do not give rise to manufacturer's or dealer's profit (or loss) to the lessor but that meet one or more of the criteria for a capital lease and also if the collectibility of the minimum lease payments is reasonably predictable and there are no important uncertainties surrounding the amount of unreimbursable costs yet to be incurred by the lessor under the lease.

Lease, leveraged. A lease which embodies all of the following characteristics: (1) Except for the exclusion of leveraged leases from the definition of a direct financing lease, otherwise meets that definition; (2) the lease involves at least three parties: A lessee, a long-term creditor, and a lessor; (3) the financing provided by the long-term creditor is nonrecourse as to the general credit of the lessor and the amount of the financing is sufficient to provide the lessor with substantial "leverage" in the transaction.

Lease, operating. All leases other than capital leases, sales-type leases, direct financing leases, and leveraged leases.

Lease, sales-type. Leases that give rise to manufacturer's or dealer's profit (or loss) to the lessor and that meet one or more of the criteria applicable to capital leases and the collectibility of the minimum lease payments is reasonably predictable and there are no important uncertainties surrounding the amount of unreimbursable costs yet to be incurred by the lessor under the lease.

Lessee's incremental borrowing rate. The rate that, at the inception of the lease, the lessee would have incurred to borrow over a similar term the funds necessary to purchase the leased asset.

Liability, contingent. A possible source of obligation of an air carrier dependent upon the fulfillment of conditions regarded as uncertain.

Load, available. Represents the maximum salable load. It is the allowable gross weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For passenger aircraft, the available load must not exceed the weight of the maximum number of passengers who can be accommodated in the seats installed in the aircraft plus the weight of the traffic that can be accommodated in the cargo space.

Load, average revenue. The average total revenue tons carried in revenue services, determined by dividing total revenue ton-miles by aircraft miles flown in revenue services.

Load, average revenue passenger. Average number of revenue passengers carried in passenger services, determined by dividing revenue passenger-miles by aircraft miles flown in revenue passenger services.

Load factor, over-all revenue. The percent that total revenue ton-miles (passenger plus nonpassenger) are of available ton-miles in revenue services.

Load factor, revenue passenger. The percent that revenue passenger-miles are of available seat-miles in revenue passenger services.

Load, minimum fuel. The minimum quantity of fuel with which an aircraft may be dispatched in accordance with the safety operating needs of the air carrier.

Load, salable. (See *Load, available.*)

Mail, nonpriority. Mail moving at service transportation rates lower than those established for mail bearing postage established specifically for air mail service.

Mail, priority. Mail bearing postage at rates established specifically for air mail service or mail moving at service transportation rates equivalent to those established for air mail service.

Marketable (as applied to an equity security). An equity security as to which sales prices or bid and ask prices are currently available on a national securities exchange (that is, those registered with the Securities and Exchange Commission) or in the over-the-counter market. In the over-the-counter market, an equity security shall be considered marketable when a quotation is publicly reported by the National Association of Securities Dealers Automatic Quotations System or by the National Quotations Bureau, Inc. (provided, in the later case, the quotations are available from at least three dealers). Equity securities traded in foreign markets shall be considered marketable when such markets are of a breadth and scope comparable to those referred to above. Restricted stock (that is, securities for which sale is restricted by a governmental or contractual requirement) does not meet this definition. However, if any portion of such restricted stock can reasonably be expected to qualify for sale within one year, such securities are not considered restricted.

Market price. The price (see also the definition of Marketable—as applied to an equity security) of a single share or unit of a marketable equity security.

Market value (equity security). Aggregate market price of all shares or units of each marketable equity security in the portfolio. When an air carrier has taken positions involving short sales, sales of calls, and purchases of puts for marketable equity securities and the same securities are included in the portfolio, those contracts shall be taken into consideration in the determination of market value of the marketable equity securities.

Mile. A statute mile (5,280 feet).

Miles completed, percent scheduled aircraft. The percent of scheduled aircraft miles which were performed.

Miles completed, scheduled aircraft. The aircraft miles performed on scheduled flights computed between only those scheduled points actually served.

Miles flown, aircraft. The miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern. For this purpose, operation to a flag stop is a stage completed even though a landing is not actually made. In cases where the interairport distances are inapplicable, aircraft miles flown are determined by multiplying the normal crusing speed for the aircraft type by the airborne hours.

Miles flown, nonrevenue aircraft. The aircraft miles flown on nonrevenue flights, such as ferry (including empty backhauls to MAC one-way charters), personnel training, extension and development, and abortive revenue flights.

Miles, revenue aircraft. The aircraft miles flown in revenue service.

Miles, scheduled aircraft. The sum of the airport-to-airport distances of all flights scheduled to be performed over the air carrier's certificated routes pursuant to published flight schedules. Flights listed in the published schedules for operation only as extra sections, when traffic warrants, are excluded.

Minimum lease payments. The payments that the lessee is obligated to make or can be required to make in connection with the leased property. This includes (1) the minimum lease payments called for by the lease over the lease term; (2) any guarantee by the lessee of the residual value at the expiration of the lease term; and (3) any payment that the lessee must make or can be required to make upon failure to renew or extend the lease at the expiration of the lease term. Regarding the lessor, such payments also include any guarantee of the residual value or of rental payments beyond the lease term by a third party unrelated to either the lessee or the lessor: *Provided,* The third party is financially capable of discharging the obligations that may arise from the guarantee.

Modification. An alteration in a structure or unit of equipment that changes its design and is made to correct an error, increase production, improve efficiency of operation, or for some other reason.

Net unrealized gain or loss, marketable equity securities portfolio. Represents the difference between the market value of marketable equity securities and their aggregate cost at any given date.

Obsolescence. The process of becoming out of date due to progress of the arts and sciences, changed economic conditions, legislation, etc., which ultimately results in the retirement or other disposition of property.

Off-Line. Installations maintained or facilities used for other than scheduled certificated air services.

On-Line. Installations maintained or facilities used in conducting scheduled certificated air services.

Domestic. Flight stages with both terminals within the 50 States of the United States and the District of Columbia.

Territorial. Flight stages with both terminals within territory under U.S. jurisdiction where at least one of the terminals is not within a State or the District of Columbia.

International. Flight stages with one or both terminals outside of territory under U.S. jurisdiction.

Operations, systems. The over-all operations of an air carrier including all of the operating entities of an air carrier having multiple operations.

Passenger-mile. One passenger transported 1 mile. Passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of passengers transported on that stage.

Passenger-mile, nonrevenue. One nonrevenue passenger transported one mile.

Passenger-mile, revenue. One revenue passenger transported one mile.

Passenger, nonrevenue. Person receiving air transportation from the air carrier for which remuneration is not received by the air carrier. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are not counted as passengers.

Passenger, revenue. Person receiving air transportation from the air carrier for which remuneration is received by the air carrier. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are not counted as passengers.

Passengers transported. Passengers on board each flight stage.

Person controlling an air carrier. Any person, as defined in section 101 (27) of the Act, whom the Board has found, in any proceeding, to control an air carrier, or who holds, directly or indirectly, the legal or beneficial ownership of more than 50 percent of the outstanding voting capital stock or capital of an air carrier, and who does not make a proper showing to the Board that he does not control the carrier despite such stock ownership, shall be deemed to be a person controlling the carrier for the purpose of this part. A brokerage firm which holds record ownership of securities merely for the convenience of the customer beneficially owning the stock shall not be deemed a person controlling.

Premium (as applied to securities issued or assumed by the air carrier). The excess of (1) the then current money value of the consideration received from their sale, less the amount included therein for dividends or interest accrued, over (2) their par or stated value.

Pretax accounting income. Income or loss for a period exclusive of related income tax expense.

Property (as applied to traffic). (See *Cargo.*)

Realized gain or loss, marketable equity security. The difference between the net proceeds from the sale of a marketable equity security and its cost.

Replacement. Substitution of new for existing facilities that are worn out, damaged beyond repair, or have become inadequate in service.

Residual value. The predetermined portion of the cost of a unit of property or equipment excluded from depreciation. It shall represent a fair and reasonable estimate of recoverable value as at the end of the service life over which the property or equipment is depreciated and shall give due consideration to the proceeds anticipated from disposition of the property or equipment and the extent to which costs attaching to property or equipment are otherwise recoverable through charges against income.

Retirement. The permanent withdrawal of assets from services of the corporate entity through sale, abandonment, demolition, or other disposal.

Retirement, date of. The date on which property or equipment is permanently withdrawn from services of the corporate entity.

Route, certificated. The route over which an air carrier is authorized to provide air transportation by a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board pursuant to section 401(d) (1) or (2) of the Act.

Salvage value. The amount received for property retired, less the expenses incurred in connection with the sale or in the preparation of the property for sale; or, if retained, the amount at which the material recovered is charged to materials and supplies or other appropriate account.

Schedule, published. An official schedule of an air carrier on file with the Civil Aeronautics Board.

Seats available. Installed seats in an aircraft (including seats in lounges) exclusive of any seats not offered for sale to the public by the carrier; provided that in no instance shall any seat sold be excluded from the count of available seats.

Seats, average available. The average number of seats available for passengers, determined by dividing available seat-miles by revenue aircraft miles flown in passenger service.

Seat-miles available, revenue. The aircraft miles flown on each flight stage multiplied by the number of seats available for revenue use on that stage.

Section 418 Cargo operations. The carriage by aircraft of property as a common carrier for compensation or hire, or mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, but excluding service between any pair of points both of which are in Alaska or Hawaii. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

Segment, service. A pair of points served or scheduled to be served by a single stage of at least one flight within any given time period.

Service, charter. Nonscheduled air transport service in which the party receiving transportation obtains exclusive use of an aircraft at published tariff rates and the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of, the accounting air carrier.

Service, coach (tourist). Transport service specifically established for the carriage of passengers at special reduced passenger fares that are predicated on both the operation of specifically designated aircraft space and a reduction in the quality of service regularly and ordinarily provided.

Service, irregular (excluding charter and special). Nonscheduled inter-airport air transport services which do not constitute an integral part of scheduled services to certificated points, where each passenger or property shipment is individually documented at published tariff rates (other than charter rates) and the remuneration paid by each party receiving transportation accrues directly to, and the responsibility for providing transportation is that of the accounting air carrier.

Service, first class. Transport service established for the carriage of passengers moving at either standard fares or premium fares, or at reduced fares not predicated upon the operation of specifically allocated aircraft space, and for whom standard or premium quality services are provided.

Service life. The period between the date of installation of property or equipment and its date of retirement.

Service, mixed. Transport service for the carriage of both first-class and coach (tourist) passengers on the same aircraft.

Service, nonpassenger. Transport service established for the carriage of traffic other than passengers.

Service, nonscheduled. Includes transport service between points not covered by Certificates of Public Convenience and Necessity issued by the Civil Aeronautics Board to the air carrier; services pursuant to the charter or hiring of aircraft; other revenue services not constituting an integral part of the services performed pursuant to published schedules; and related nonrevenue flights.

Service, passenger-cargo. Transport service established for the carriage of passengers which may also be used jointly for the transportation of cargo.

Service, scheduled. Transport service operated pursuant to published flight schedules, including extra sections and related nonrevenue flights.

Service, special. Nonscheduled air transport services in which the party receiving transportation obtains exclusive use of an aircraft at other than tariff rates and/or individually-ticketed services not involving inter-airport transportation, whereby the remuneration paid by the party receiving the transportation accrues directly to, and the responsibility for providing the service is that of the accounting air carrier.

Service, transport. The operation of facilities for the carriage of traffic by air.

Service, tourist. (See *Service, coach.*)

Services, all. The total of scheduled and nonscheduled transport services.

Stop, flag. A point on an air carrier's certificated route that is scheduled to be served only when traffic is to be picked up or discharged.

Stop, fuel. A point on an air carrier's certificated route scheduled to refuel the aircraft but not to enplane or deplane traffic.

Stops, technical. Aircraft landing made for purposes other than enplaning or deplaning traffic. For purposes of identifying reporting entities, landings made for stopover passengers are regarded as technical stops.

Tariff, published. A publication containing rates applicable to the transportation of persons or cargo and rules relating to or affecting such rates or transportation, filed with the Civil Aeronautics Board.

Taxable income. The excess of revenues over deductions or the excess of deductions over revenues to be reported for income tax purposes for a period.

Tax effects. Differentials in income taxes of a period attributable to (1) revenue or expense transactions which enter into the determination of pretax accounting income in one period and into the determination of taxable income in another period, (2) deductions or credits that may be carried backward or forward for income tax purposes, and (3) adjustments of prior periods (or of the opening balance of retained earnings) and direct entries to other stockholders' equity accounts which enter into the determination of taxable income in a period but which do not enter into the determination of pretax accounting income of that period. A permanent difference does not result in a "tax effect" as the term is used in this System of Accounts and Reports.

Ton. A short ton (2,000 pounds).

Ton-mile. One ton transported 1 mile. Ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons transported on that stage.

Ton-mile, nonrevenue. One ton of nonrevenue traffic transported 1 mile.

Ton-mile, passenger. One ton of passenger weight (including all baggage) transported 1 mile. (See also *Weight, passenger.*)

Ton-mile, revenue. One ton of revenue traffic transported 1 mile.

Ton-miles available, revenue. The aircraft miles flown on each flight stage multiplied by the ton capacity available for use on that stage.

Traffic, enplaned. A count of the number of passengers boarding and tons of cargo loaded on an aircraft. For this purpose, passengers and cargo on aircraft entering a carrier's system on interchange flights are considered as enplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Civil Aeronautics Board, are considered as enplaning at the junction point.

Traffic, deplaned. A count of the number of passengers getting off and tons of cargo unloaded from an aircraft. For this purpose, passengers and cargo on aircraft leaving a carrier's system on interchange flights are considered as deplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Civil Aeronautics Board, are considered as deplaning at the junction point.

Traffic, nonrevenue. Passengers and cargo transported by air for which no remuneration or token service charges are received by the air carrier. Airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by section 403(b) of the Federal Aviation Act and Part 223 of the Board's Economic Regulations, as well as travel agents, cargo agents, and tour conductors traveling at reduced fares are also considered nonrevenue traffic.

Traffic office. A facility where air transportation is sold, and related processes of documentation and reservation confirmation are performed.

Traffic, revenue. Passengers and cargo transported by air for which remuneration is received by the air carrier. Airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by section 403(b) of the Federal Aviation Act and Part 223 of the Board's Economic Regulations, travel agents, cargo agents, and tour conductors traveling at reduced fares, and other passengers and cargo carried for token service charges, are not considered as revenue traffic.

Transportation, free. The carriage of any person or cargo (other than cargo owned by the air carrier) without compensation.

Unit basis (in depreciation accounting). A plan under which depreciation expenses is accrued upon the basis of the book cost of the individual item of property in relation to the service life and salvage value of the particular item.

Valuation allowance, marketable equity securities portfolio. The net unrealized loss (the amount by which aggregate cost exceeds market value) in that portfolio.

Value, service. The difference between the book cost and the residual value of property and equipment.

Weight, allowable gross. The maximum gross weight (of the aircraft and its contents) which an aircraft is licensed to carry into the air on each flight stage.

Weight, average available. The average capacity available for revenue traffic, determined by dividing available ton-miles by aircraft miles in revenue service.

Weight, empty. The weight of the airframe, engines, propellers, and fixed equipment of an aircraft. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Weight, passenger. For the purposes of this manual, a standard weight of 200 pounds per passenger (including all baggage) is used for all civil operations and classes of service. Other weights may be prescribed in specific instances upon the initiative of the Board or upon factually supported request by an air carrier.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-781, 37 FR 25222, Nov. 29, 1972; ER-820, 38 FR 24352, Sept. 7, 1973; ER-836, 39 FR 5757, Feb. 14, 1974; ER-948, 41 FR 12288, Mar. 25, 1976; ER-980, 42 FR 22, Jan. 3, 1977; ER-1013, 42 FR 37512, July 21, 1977; ER-1022, 42 FR 46494, Sept. 15, 1977; ER-1081, 43 FR 53647, Nov. 16, 1978; ER-1188, 45 FR 48869, July 22, 1980; ER-1400, 50 FR 11, Jan. 2, 1985]

Section 04—Air Carrier Groupings

(a) All large certificated air carriers are placed into three basic air carrier groupings based upon their level of operations and the nature of these operations. In order to determine the level of operations, total operating revenues for a twelve-month period are used. The following operating revenue ranges are used to establish air carrier groupings:

Carrier group	Total annual operating revenues
I	0-$75,000,000
II	$75,000,001-$200,000,000
III	$200,000,001 +

For reporting purposes, Group I air carriers are further divided into two subgroups: (1) Air carriers with total annual operating revenues between $10,000,000 and $75,000,000 and (2) air carriers with total annual operating revenues below $10,000,000.

(b) Both the criteria for establishing air carrier groupings and the assignment of each air carrier to a specific group of carriers will be reviewed periodically by the Comptroller to assure the maintenance of appropriate standards for the grouping of carriers. When an air carrier's level of operations passes the upper or lower limits of its currently assigned carrier grouping, the carrier is not automatically transferred to a different group and a new level of reporting. The Office of Comptroller will issue an updated listing of the carrier groups on a semiannual basis. A carrier may petition for reconsideration of its assigned carrier grouping or request a waiver from the accounting and reporting requirements that are applicable to a particular group under the provisions of Section 1-2 of this Uniform System of Accounts and Reports.

[ER-1297, 47 FR 32919, July 30, 1982, as amended by ER-1401, 50 FR 238, Jan. 3, 1985]

GENERAL ACCOUNTING PROVISIONS

Section 1—Introduction to System of Accounts and Reports

Sec. 1-1 Applicability of system of accounts and reports.

Each large certificated air carrier shall keep its books of account, records and memoranda and make reports to the Board in accordance with this system of accounts and reports. The Civil Aeronautics Board reserves the right, however, under the provisions of sections 407 and 416 of the Federal Aviation Act of 1958, as amended, to expand or otherwise modify the classes of carriers subject to this system of accounts and reports.

[ER-1400, 50 FR 11, Jan. 2, 1985]

Sec. 1-2 Waivers from this system of accounts and reports.

A waiver from any provision of this system of accounts or reports may be made by the Civil Aeronautics Board upon its own initiative or upon the submission of written request therefor from any air carrier, or group of air carriers, provided that such a waiver is in the public interest and each request for waiver expressly demonstrates that: existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts and reports; and the application of such alternative procedure will maintain or improve uniformity in substantive results as between air carriers.

Sec. 1-3 General description of system of accounts and reports.

(a) This system of accounts and reports is designed to permit limited contraction or expansion to reflect the varying needs and capacities of different air carriers without impairing basic accounting comparability as between air carriers. In its administration three air carrier groups, designated Group I, Group II, and Group III, respectively (see section 04), are established by the Civil Aeronautics Board. This grouping will be reviewed from time to time upon petition of individual air carriers or by initiative of the Civil Aeronautics Board with the view of a possible regrouping of the air carriers.

(b) Under the system of accounts prescribed, balance sheet elements are accounted for by all air carrier groups within a fixed uniform pattern of specific accounts. All profit and loss elements are accounted for within specific objective accounts established for each air carrier group resulting from dual classifications, designated for each air carrier group, which are descriptive of both basic areas of financial activity, or functional operation, and objective served. The profit and loss elements of the three air carrier groups can be reduced to broad objectives and general or functional classifications which are comparable for all air carrier groups. Both balance sheet and profit and loss accounts and account groupings are designed, in general, to embrace all activities, both air transport and other than air transport, in which the air carrier engages and provide for the separation of elements identifiable exclusively with other than air transport activities. Profit and loss elements which are recorded during the current accounting year are subclassified as between (1) those which relate to the current accounting year and adjustments of a recurrent nature applicable to prior accounting years, and (2) extraordinary items of material magnitude.

(c) In order to afford air carriers as much flexibility and freedom as possible in establishing ledger and subsidiary accounts to meet their individual needs, a minimum number of account subdivisions have been prescribed in this Uniform System of Accounts. It is intended, however, that each air carrier, in maintaining its accounting records, will provide subaccount and subsidiary account segregations of accounting elements which differ in nature of accounting characteristics, in a manner which will render individual elements readily discernible and traceable throughout the accounting system, and will provide for relating profit and loss elements to applicable balance sheet counterparts.

Sec. 1-4 System of accounts coding.

(a) A four digit control number is assigned for each balance sheet and profit and loss account. Each balance sheet account is numbered sequentially, within blocks, designating basic balance sheet classifications. The first two digits of the four digit code assigned to each profit and loss account denote a detailed area of financial activity or functional operation. The first two digits, thus assigned to each profit and loss account, are numbered sequentially within blocks, designating more general classifications of financial activity and functional operation. The second two digits assigned to profit and loss accounts denote objective classifications.

(b) A fifth digit, appended as a decimal, has been assigned for internal control by the Civil Aeronautics Board of prescribed subdivisions of the primary objective balance sheet and profit and loss classifications. A different fifth digit code number from that assigned by the Civil Aeronautics Board may be adopted for internal recordkeeping by the air carrier provided the prescribed subclassification of objective accounts is not impaired and the code number assigned by the Civil Aeronautics Board is employed in reporting to the Board on Form 41 Reports.

Sec. 1-5 Records.

(a) The general books of account and all books, records, and memoranda which support in any way the entries therein shall be kept in such manner as to provide at any time full information relating to any account. The entries in each account shall be supported by such detailed information as will render certain the identification of all facts essential to a verification of the nature and character of each entry and its proper classification under the prescribed Uniform System of Accounts. Registers, or other appropriate records, shall be maintained of the history and nature of each note receivable and each note payable.

(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records such as organization tables and charts, internal accounting manuals and revisions thereto, minute books, stock books, reports, cost distributions and other accounting work sheets, correspondence, memoranda, etc., which may constitute necessary links in developing the history of, or facts regarding, any accounting or financial transaction.

(c) All books, records and memoranda shall be preserved and filed in such manner as to readily permit the audit and examination thereof by representatives of the Civil Aeronautics Board. All books, records, and memoranda shall be housed or stored in such manner as to afford protection from loss, theft, or damage by fire, flood or otherwise and no such books and records shall be destroyed or otherwise disposed of, except in conformance with Part 249 of the Economic Regulations of the Civil Aeronautics Board for the preservation of records.

Sec. 1-6 Accounting entities.

(a) Separate accounting records shall be maintained for each air transport entity for which separate reports to the Civil Aeronautics Board are required to be made by sections 21(g) and for each separate corporate or organizational division of the air carrier. For purposes of this Uniform System of Accounts and Reports, each nontransport entity conducting an activity which is not related to the air carrier's transport activities and each transport-related activity or group of activities qualifying as a nontransport venture pursuant to paragraph (b) of this section, whether or not formally organized within a distinct organizational unit, shall be treated as a separately operated organizational division; except that provisions of this paragraph and paragraph (b) shall not apply to leasing activities.

(b) As a general rule, any activity or group of activities comprising a transport-related service provided for in transport-related revenue and expense accounts 09 through 18 shall be considered a separate nontransport venture under circumstances in which either: (1) A separate corporate or legal entity has been established to perform such services, (2) the aggregate annual revenue rate, as determined in section 2-1(d), during either of the prior two years exceeds the greater of $1 million per annum or one percent of the air carrier's total annual transport revenues, or (3) the aggregate annual expense rate, as determined in section 2-1(d), during either of the prior two years exceeds the greater of $1 million or one percent of the carrier's total annual operating expenses: *Provided*, That revenues and expenses from in-flight sales, section 406 subsidy, interchange sales, and mutual aid assistance shall be considered related to air transportation and accounted for accordingly, regardless of the revenue or expense standard set forth above.

(c) The records for each required accounting entity shall be maintained with sufficient particularity to permit a determination that the requirements of section 2-1 have been complied with.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-841, 39 FR 11994, Apr. 2, 1974; ER-1022, 42 FR 46495, Sept. 15, 1977; ER-1027, 42 FR 60127, Nov. 25, 1977]

Sec. 1-7 Interpretation of accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Bureau of Carrier Accounts and Audits, for explanation, interpretation, or resolution.

[ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 1-8 Address for reports and correspondence.

All reports required under this part and related correspondence shall be addressed to: Data Administration Division, DAI-20, Room 4123, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

[ER-1400, 50 FR 12, Jan. 2, 1985]

Sec. 1-9 Conversion to this system of accounts and reports.

(a) Upon the adoption of this system of accounts and reports all balance sheet account balances shall be restated as of the effective date of the regulation to conform with the provisions of this part except as provided in this section 1-9. All necessary adjustments shall be accumulated in an appropriate clearing account and the net transferred to profit and loss classification 9700 Extraordinary Items.

(b) Any adjustments of allowances for depreciation, obsolescence of flight equipment expendable parts, uncollectible accounts or other valuations of assets, shall be applied to current and subsequent accounting periods by spreading the depreciated cost of such assets over the remaining life of the parts and assemblies shall be divided between the portion applicable to flight asset to which applicable and shall not be applied retroactively.

(c) Any allowance accumulated for obsolescence of flight equipment spare parts and assemblies shall be divided between the portion applicable to flight equipment expendable parts and flight equipment rotable parts and shall be recorded in the applicable allowance accounts.

(d) Any provision of this system of accounts respecting allowances for depreciation, or other valuation of assets, shall be made applicable as at the effective date of this regulation to all assets then existing as well as to assets subsequently acquired against which the accrual of allowances would be appropriate.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12289, Mar. 25, 1976; ER-980, 42 FR 23, Jan. 3, 1977; ER-1401, 50 FR 238, Jan. 3, 1985]

Section 2—General Accounting Policies

Sec. 2-1 Basis of allocation between entities.

(a) The provisions of this section shall apply to each person controlling an air carrier, each person controlled by the air carrier, as well as each transport entity and organizational division of the air carrier for which separate records must be maintained pursuant to section 1-6.

(b) Each transaction shall be recorded and placed initially under accounting controls of the particular air transport entity or organizational division of the air carrier or member of an affiliated group to which directly traceable. If applicable to two or more accounting entities, a proration shall be made from the entity of original recording to other participating entities on such basis that the statements of financial condition and operating results of each entity are comparable to those of distinct legal entities. The allocations involved shall embrace all debits and credits associated with each entity and shall comply with the provisions of section 2-18, as applicable.

(c) For purposes of this section, investments by the air carrier in resources or facilities used in common by the regulated air carrier and those transport-related revenue services defined as separate nontransport ventures under section 1-6(b) shall not be allocated between such entities but shall be reflected in total in the appropriate accounts of the entity which predominately uses those investments. Where the entity of predominate use is a nontransport venture, the air carrier shall reflect the investment in account 1510.3, Advances to Associated Companies.

(d) For purposes of this Uniform System of Accounts and Reports, all revenues shall be assigned to or apportioned between accounting entities on bases which will fully recognize the services provided by each entity, and expenses, or costs, shall be apportioned between accounting entities on such bases as will result: (1) With respect to transport-related services, in the assignment thereto of proportionate direct overheads, as well as direct labor and materials, of the applicable expense functions prescribed by this system of accounts and reports, and (2) with respect to separate ventures, in the assignment thereto of proportional general and administrative overheads as well as the direct overheads, labor, and materials.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-841, 39 FR 11994, Apr. 2, 1974; ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-2 Distribution of revenues and expenses within entities.

(a) Revenues and expenses attributable to a single natural objective account or functional classification shall be assigned accordingly.

(b) Revenue and expense items which are common to two or more natural objective accounts shall be recorded in the objective accounts to which they predominantly relate.

(c) Expense items contributing to more than one function shall be charged to the general overhead functions to which applicable except that where only incidental contribution is made to more than a single function an item may be included in the function to which primarily related, provided such function is not distorted by including an aggregation of amounts applicable to other functions. When assignment of expense items on the basis of the primary activity to which related does not in the aggregate result in a fair presentation of the expenses applicable to each function, apportionment shall be made between functions based upon a study of the contribution to each function during a representative period.

Sec. 2-3 Transactions in foreign currencies.

(a) All accounts provided herein shall be stated in terms of United States dollars.

(b) At each transaction date, each asset, liability, revenue, or expense arising from a transaction denominated in a foreign currency shall be translated into United States dollars by use of the exchange rate in effect at that date, and shall be recorded at that dollar amount. If the translation of each transaction is impracticable, the use of an average exchange rate for the period will be permitted provided that the results obtained do not differ materially from those that would be achieved through the use of a daily rate.

(c) At the balance sheet date for each quarterly accounting period, recorded dollar balances representing cash and amounts owed by or to the carrier that are denominated in a foreign currency shall be adjusted to reflect the current rate of foreign exchange. In addition, debt securities held by the carrier that are essentially equivalent to notes receivable shall also be adjusted to reflect the current rate of exchange.

(d) At the balance sheet date for each quarterly accounting period, assets carried at market whose current market price is stated in a foreign currency shall be adjusted to the equivalent dollar market price at the balance sheet date (that is, the foreign currency market price at the balance sheet date multiplied by the current rate).

(e) Translation of accounts in foreign statements that are carried at exchange prices shall be in a manner that retains their measurement bases as follows:

(1) Accounts carried at prices in past exchanges shall be translated at historical rates; and

(2) Accounts carried at prices in current purchase or sales exchanges or future exchanges shall be translated at the current rate.

(f) Exchange gains and losses which result from the application of the provisions of paragraphs (a), (b), (c), (d) and (e) of this section shall be included in determining net income for the accounting period in which the rate changes. Such gains or losses which result from normal, routine, current fluctuations in rates of foreign exchange shall be charged to Accounts 6861 or 6961, Foreign Exchange Gains and Losses. Gains or losses of a nonroutine abnormal character and gains or losses which rise from long-term debt principal and interest transactions shall be charged to account 8185, Foreign Exchange Gains and Losses. See paragraph (h) for circumstances under which a gain or loss on a foreign currency transaction may be deferred.

(g) A gain or loss applicable to a forward exchange contract shall be included in determining net income by charging account 8185 for the accounting period in which the rate changes if the gain or loss pertains to a forward contract that is intended to be a:

(1) Hedge of a foreign currency exposed net asset or net liability position;

(2) Hedge of a foreign currency commitment that does not meet the following conditions:

(i) The life of the forward contract extends from the foreign currency commitment date to the anticipated transaction date or a later date,

(ii) The forward contract is denominated in the same currency as the foreign currency commitment and for an amount that is the same or less than the amount of the foreign currency commitment.

(iii) The foreign currency commitment is firm and uncancelable; or,

(3) Speculation.

(h) A gain or loss shall be deferred and included in the measurement of the dollar basis of the related foreign currency transaction if the gain or loss pertains to a forward contract that is intended to be a hedge of an identifiable foreign currency commitment that meets all of the conditions described in paragraphs (g)(2) (i) through (iii) of this section. Losses on a forward contract shall not be deferred, however, if deferral could lead to recognizing losses in later periods.

(i) The portion of a forward contract that shall be accounted for in accordance with paragraph (h) of this section is limited to the amount of the related commitment. If a forward contract that meets all of the conditions described in paragraphs (g)(2)(i) through (iii) of this section exceeds the amount of the related commitment, the gain or loss pertaining to a portion of the forward contract in excess of the commitment shall be deferred to the extent that the forward contract in excess of of the commitment shall be deferred to the extent that the forward contract is intended to provide a hedge on an after tax-basis. A deferred gain or loss shall be offset against the related tax effects in the period the tax effects are recognized. A gain or loss pertaining to the portion of a forward contract in excess of the amount that provides a hedge on an after-tax basis shall not be deferred.

[ER-980, 42 FR 23, Jan. 3, 1977, as amended by ER-1013, 42 FR 37513, July 21, 1977, ER-1076, 43 FR 46295, Oct. 6, 1978]

Sec. 2-4 Accounting period.

(a) The accounting year of each air carrier subject to this Uniform System of Accounts shall be the calendar year unless otherwise approved by the Civil Aeronautics Board.

(b) Each air carrier shall keep its financial accounts and records on a full accrual basis for each quarter so that all transactions, as nearly as may reasonably be ascertained, shall be fully reflected in the air carrier's books for the quarter in which revenues have been earned and the costs attaching to the revenues so earned in each quarter have been incurred independently of the incidence of sales or purchases and settlement with debtors or creditors.

(c) Expenditures incurred during the current accounting year which demonstrably benefit operations to be performed during subsequent accounting years to a significant extent shall be deferred and amortized to the period in which the related operations are performed when of sufficient magnitude to distort the accounting results of the year in which incurred.

(d) Expenditures charged directly or amortized to operations within one accounting year shall not be reversed in a subsequent accounting year and reamortized or charged directly against operations of subsequent years except that retroactive adjustments are permitted where necessary to conform with adjustments required by the Civil Aeronautics Board for ratemaking purposes.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1027, 42 FR 60127, Nov. 25, 1977; ER-1188, 45 FR 48870, July 22, 1980]

Sec. 2-5 Liability accruals.

(a) Charges shall be made against income and accruals made only if it is probable that an asset has been impaired or a liability incurred at the end of the reporting period and the amount of the asset impariment or liability can be reasonably estimated.

(b) Where obligation has accrued in accounting for pension cost, deferred compensation, vacation pay, and other employment-related costs, an estimate may be made of the currently existing liability on such actuarial or other bases as can be justified from available information, provided that balances are reevaluated and adjusted at least once each accounting year to accurately reflect the true detriment (or cost) to the air carrier.

[ER-980, 42 FR 24, Jan. 3, 1977]

Sec. 2-6 Income tax accruals.

(a) All income taxes shall be accrued by proportionate charges or credits to income in each calendar quarter and shall reflect the application of the effective tax rate expected to be applicable for the full year exclusive of tax related to significant unusual or extraordinary items that are separately disclosed or included net of tax in the reporting period. The interperiod tax allocation method shall be applied for all material timing differences between pretax accounting income and taxable income.

(b) The tax effect of timing differences which increase or decrease taxes currently payable shall be recognized in balance sheet account 2340, Deferred Income Taxes. Any resulting net debit balance in this account shall be treated for statement purposes as a special subaccount in balance sheet account 1890, Other Assets. In effecting these accruals, records with respect to deferred taxes (including foreign, state, and local taxes based upon income) shall be maintained in accordance with the provisions of balance sheet account 2340, Deferred Income Taxes.

(c) The tax effects of any realizable tax carrybacks shall be recognized in the determination of net income (loss) of the loss periods; appropriate adjustments of existing deferred income taxes may be necessary.

(d) The benefits of loss carryforwards shall normally be recognized in the year in which such loss is applied to reduce income taxes. However, in unusual circumstances when realization is assured beyond a reasonable doubt, the future benefits may be recognized in the year of loss. In cases where deferred taxes attributable to prior timing differences exist to recognize all or a portion of the loss carryforward, an appropriate amount of the benefit may be offset against deferred taxes. However, net deferred taxes attributable to prior timing differences which would not be amortized until after the expiration of the carryforward period, shall not be offset by loss carryforwards.

(e) At the option of the air carrier, investment tax credits may be treated as a reduction of income tax expense in the year they are actually realized (flow-through method) or they may be deferred and amortized over the useful life of the property to which it relates and they shall be accounted for in accordance with the provisions of balance sheet accounts 2130, Accrued Taxes, 2340, Deferred Income Taxes, and 2345, Deferred Investment Tax Credits.

[ER-948, 41 FR 12289, Mar. 25, 1976, as amended by ER-980, 42 FR 24, Jan. 3, 1977]

Sec. 2-7 Extraordinary items, discontinued operations, prior period adjustments, and accounting changes.

(a) All items affecting net income, including revenue and expense adjustments, shall be reported in the profit and loss accounts to which they relate unless evidence clearly supports their treatment as an extraordinary item, as a discontinued operation, a prior period adjustment, or a change in accounting principle.

(b) Extraordinary items recorded in section 9700 shall be characterized by their unusual nature and infrequent occurrence, taking into account the environment in which the air carrier operates. They must also be material. In this context, unusual means that the underlying event or transaction is abnormal and significantly different from the ordinary and typical activities of the air carrier, and infrequently occurring means that the event or transaction is not reasonably expected to recur in the foreseeable future.

(c) The materiality of an unusual and infrequently occurring event or transaction should be measured in relation to its impact on net income (loss) before extraordinary items or to the trend of earnings. As a standard practice, an unusual and infrequently occurring event or transaction shall be deemed to have a material impact on income (loss) before extraordinary items if it would be considered material for the purposes of filing the Securities and Exchange Commission's Form 10-K or if it exceeds one-half of one percent of the twelve-months-to-date total operating revenues or total operating expenses, depending on the nature of the item. When an item is not material but does exceed one percent of the total functional classification of which it is a part, it shall be included in the ordinary account to which applicable, and footnoted on CAB Form 41 Schedule P-2. As a general rule, items shall be considered separately rather than in the aggregate. However, the effects of a series of related transactions arising from a single specific and separately identifiable event or plan of action shall be aggregated for the purpose of determining materiality.

(d) Events or transactions which are material as determined in conjunction with the criteria set forth in paragraph (c) of this section and are either unusual or nonrecurring, but not both, should be disclosed on CAB Form 41 Schedule P-2. The events or transactions should be identified both as to their nature and their financial effects.

(e) The earnings (losses) of discontinued nontransport operations shall be reported separately from transport, transport-related and continuing nontransport operations and separately from extraordinary items. In addition, any gain or loss from the disposal of a nontransport operation shall be reported in conjunction with the related results of discontinued nontransport operations in functional classification 9600 and not as an extraordinary item. For the purposes of this system of accounts and reports, discontinued nontransport operations shall refer to the disposal of investor controlled companies and the cessation of nontransport operations, the results of which are accounted for through profit and loss objective accounts 86, 87, and 88.2.

(f) Prior period adjustments are classified as those affecting previous fiscal years and those affecting previous fiscal years and those of the current fiscal year.

(1) Corrections of errors in earlier financial statements and adjustments resulting from the tax benefits of preacquisition loss carryforwards of purchased subsidiaries may be treated as prior period adjustments of previous fiscal years. They are reflected as adjustments to the opening balance of retained earnings.

(2) Adjustments which are related to previous interim periods of the current fiscal year are adjustments or settlements of ligitation or similar claims, of income taxes or of renegotiation proceedings. The total adjustment shall be included in the determination of net income for the current interim period. If the interim period is a period in which monthly reports are filed, a statement showing the effects of the adjustment on the current quarter and previous quarters should be attached to the submission. When the quarterly schedules are filed,

these effects should again be stated on Schedule P-2, Notes to CAB Form 41 Report.

(g) The cumulative effect of changes in accounting principles shall be reflected in the account provided for in the determination of net income and clearly and completely described in notes to the income statement (see section 18). The amount of the cumulative effect of a change in accounting principles shall represent the difference between (a) the amount of retained earnings at the beginning of the period of the change and (b) the amount of retained earnings that would have been reported at that date if the new accounting principle had been applied retroactively for all prior periods which would have been affected by recognizing only the direct effects of a change and the related income tax effect. Financial statements of prior periods shall not be restated without the prior approval of the Director, Bureau of Carrier Accounts and Audits. Changes in accounting estimates shall be accounted for in (a) the period of change if the change affects that period only or (b) the period of change and future periods if the change affects both. Materiality should be measured both in relation to the effects of each change separately and the combined effect of all changes.

[ER-948, 41 FR 12290, Mar. 25, 1976, as amended by ER-980, 42 FR 24, Jan. 3, 1977; ER-1076, 43 FR 46295, Oct. 6, 1978; ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-8 Unaudited items.

If a transaction has occurred but the amount involved is not precisely determinable, the amount shall be estimated, included in the proper accounts and where significant noted for financial statement purposes. The carrier is not required to anticipate or disclose minor items which would not appreciably affect the results of its operations or financial position.

Sec. 2-9 Improvements, additions and betterments.

(a) As a general rule, expenditures for additions, betterments or improvements, which increase the productive capacity of units of land, property or equipment, shall be capitalized rather than charged directly against income of the period in which incurred. Expenditures of insignificant amount related to individual projects may be expensed as incurred, rather than capitalized, provided their inclusion as individual items or when aggregated for like items encompassed by a particular program, will not distort current operating results.

(b) The costs to be capitalized shall include all costs directly incurred by reason of the program together with an allocated portion of overhead costs to the full extent overhead expenses have been responsive to the volume of capitalizable projects currently or periodically in process.

(c) When superior parts are substituted for old parts in existing units of property and equipment as an incident to normal maintenance operations where normal retirement procedures are not practicable, the excess cost of the new parts over the estimated current, cost of new parts of the kind replaced shall be charged to the related property and equipment account.

Sec. 2-10 Capitalization of interest.

(a) Interest may be capitalized on funds actually committed as equipment purchase deposits or actually used to finance the construction or acquisition of operating property from the date the funds are first so employed to the date the property is ready for use: *Provided,* That the capitalization will be limited in both time and amount to the reasonable requirements of such funds and that it may include interest on funds set aside and carried in balance sheet account 1550 Special Funds—Other and account 1685 Equipment Purchase Deposits and Advance Payments for a period not to exceed 6 months in advance of the date they are scheduled under a legally binding contract to be committed for payment to the manufacturer or contractor.

(b) Interest may be capitalized on funds actually employed in developmental and preoperating projects other than property acquisition and construction up to the date the related operations are initiated.

(c) In determining the amount of interest to be capitalized under the provisions of paragraphs (a) and (b) of this section 2-10, the effective interest rate shall be representative of the current rate for long-term debt of the carrier. Imputed interest at the same rate may be capitalized on equity funds whenever commitments under paragraph (a) or (b) of this section 2-10 exceed the balance of long-term debt. The amount of interest so computed shall be reduced by any interest or other earnings from such funds on deposit with or for the account of the manufacturer or contractor. With respect to funds set aside pending actual commitment, the earnings shall be computed on the basis of the average rate earned on the carrier's current or long-term investment of special funds in interest-bearing securities but not to exceed the total amount of such interest actually earned.

(d) Interest capitalized under paragraph (a) or (b) of this section 2-10 shall be charged to the balance sheet account in which the funds are carried (1550, 1685, 1689, or 1830) and credited to profit and loss subaccount 83.4-Interest Capitalized—Credit or, imputed interest, to profit and loss subaccount 83.1-Imputed Interest Capitalized—Credit. Interest capitalized under paragraph (a) of this section shall be recorded in such a manner as to facilitate audit and, upon completion of the project, shall be transferred to subaccounts of the appropriate property balance sheet accounts as a cost of the related asset. When imputed interest is capitalized, a concurrent entry shall be recorded by debiting profit and loss subaccount 83.2-Imputed Interest Deferred—Debit and crediting balance sheet account 2390 Other Deferred Credits which shall be cleared to profit and loss subaccount 83.3-Imputed Interest Deferred—Credit periodically as the amount of such interest in the asset accounts is written off.

(e) The capitalization of interest will be permitted only to the extent it is reflected in the accounts on a current basis. Furthermore, in the event that a construction project is not completed or a developmental project is not brought to fruition, any related capitalized interest shall be eliminated from the accounts by reversal of the capitalizing entries.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 24, Jan. 3, 1977]

Sec. 2-11 Accounting for transactions in gross amounts.

(a) All assets and liabilities shall be stated in balance sheet presentations in gross values, provided that all depreciation, provisions for uncollectible accounts and other valuation allowances shall be offset against the class of asset to which related. Amounts receivable from, and amounts payable to, associated companies and other air carriers, which are normally settled on a current basis shall be stated in gross amounts receivable and gross amounts payable. Amounts receivable from, and amounts payable to, individual associated companies which are not settled on a current basis, and are not includible in current assets or current liabilities, shall be stated in net amounts receivable or payable. Receivables from particular associated companies shall not be offset against payables to other associated companies.

(b) The cost of Treasury Certificates or other tax notes, which are to be surrendered to the United States Treasury, rather than independently sold, in satisfying Federal income tax liabilities may be offset against accrued Federal income tax liabilities provided both the gross income tax liability and the value of the tax notes are reflected on the face of the balance sheet. The offset of other government securities or other assets against Federal income tax liabilities is prohibited.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 24, Jan. 3, 1977]

Sec. 2-12 Acquisition and valuation of assets.

(a) As a general rule, all assets shall be recorded at cost to the air carrier and shall not be adjusted to reflect changes in market value. Exceptions to this rule shall be limited to the following items:

(1) Investments in investor controlled companies (as that term is defined in section 03) shall be recorded at cost (except as provided in section

5-2(c)) plus the equity in the undistributed earnings or losses of such companies since acquisition. (Investments in associated companies, other than investor controlled companies, and other companies shall be recorded at cost, except as provided in section 5-2(c).)

(2) Spare parts and materials of a class for which the accrual of allowances for loss in value may not be feasible, which have been expensed from current inventories and are recovered, may be returned to inventory at estimated value with contra credit to the expense accounts initially charged. The cost (as defined in section 03, "Cost") to be recorded shall represent the cash price of the asset acquired unless otherwise specifically provided in paragraphs (b) and (c) of this section. When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis, in accordance with the following provisions.

(3) The carrying amount of a marketable equity securities portfolio shall be the lower of its aggregate cost or market value, determined at the balance sheet date. The amount by which aggregate cost of the portfolio exceeds market value shall be accounted for as a valuation allowance. (See paragraph (a)(6) of this section.)

(4) Marketable equity securities owned by a carrier shall be grouped into separate portfolios according to the current or noncurrent classification of the securities for the purpose of comparing aggregate cost and market value to determine carrying amount.

(5) If there is a change in the classification of a marketable equity security between current and noncurrent (accounts 1100 and 1530, respectively), the security shall be transferred between the corresponding portfolios at the lower of its cost or market value at the date of transfer. If market value is less than cost, the market value becomes the new cost basis, and the difference shall be accounted for as if it were a realized loss and included in the determination of net income by charging account 8188.4.

(6) Changes in the valuation allowance for a marketable equity securities portfolio included in current assets shall be included in the determination of net income of the period in which they occur by charging account 8188.3. Accumulated changes in the valuation allowance for a marketable equity securities portfolio included in noncurrent assets shall be included in the equity section of the balance sheet in account 2900, Retained Earnings.

(7) For those marketable securities for which the effect of a change in carrying amount is included in stockholders' equity rather than in net income, a determination must be made as to whether a decline in market value below cost as of the balance sheet date of an individual security is other than temporary. If the decline is judged to be other than temporary, the cost basis of the individual security shall be written down to a new cost basis and the amount of the write-down shall be accounted for as a realized loss by charging account 8188.4. The new cost basis shall not be changed for subsequent recoveries in market value.

(b) Costs of assets charged against income by an air carrier shall not be reinstated through property exchanges, and again charged against income by another air carrier but shall be recorded by each successive user at the unrecovered cost of property given in exchange, adjusted by the amount of any additional cash or other consideration given or received. For purposes of this system of accounts, an exchange is defined as a transaction in which tangible property represents more than 75 percent of the fair market value of the total consideration. Capital gains or losses, as a matter of policy, will not be recognized in property exchanges. (See also section 5-3(e)(8).)

(c) The cost of properties obtained under a conditional sales contract shall be recorded as assets as the date upon which delivery has been completed even though legal title remains in the vendor unless there is material uncertainty as to the complete consummation of the transaction.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12290, Mar. 25, 1976; ER-980, 42 FR 24, Jan. 3, 1977; ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-13 Establishment of allowances.

(a) Provisions for allowances covering loss contingencies, which are not accruable because it is less than probable that an asset has been impaired or a liability has been incurred as of the report date and/or the amount of the loss cannot be reasonably estimated, are permitted as an appropriation of retained earnings and shall be maintained as a subaccount of 2900 Retained Earnings. When accrued losses and related costs are incurred, they shall not be charged to the appropriation and at no time shall the appropriation be transferred in whole or in part to income.

(b) All allowances shall be classified in balance sheet presentations in terms of their inherent impact upon the air carrier's financial condition as either valuation of assets (offsetting the assets to which related), accrued liabilities, or appropriations of retained earnings.

(c) [Reserved]

(d) Additional allowances over those prescribed in this system of accounts may be established for the purpose of allocating expense charges between calendar quarters of each accounting year in accordance with operations performed, in the event such expenditures are part of a specific program to which the air carrier is demonstrably committed and are of sufficient magnitude to significantly distort the financial results of the current quarter if expensed directly.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12290, Mar. 25, 1976; ER-980, 42 FR 25, Jan. 3, 1977; ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-14 Depreciation and amortization.

(a) Depreciation shall be calculated by the air carrier in such a manner as will prevent the charging of either excessive or inadequate expense or the accumulation of excessive or inadequate allowances, and shall be based upon a study of the air carrier's history and experience or such engineering or other information as may be available with respect to prospective future conditons and without regard to depreciation accounting practices adopted for tax purposes. Undepreciable residual values shall be established for each class of property and equipment and shall represent the fair and reasonable estimate of the recoverable value as of the end of the service life over which the property is depreciated. Depreciation chargeable against operations shall be limited to the actual costs incurred in the acquisition of the properties to which related. The cost of properties which are generally repaired and reused shall not upon retirement be charged against current operating expenses but, to the extent not written off in the form of depreciation, shall be treated as part of the capital gain or loss. The cost of properties of a type which are recurrently expended and replaced shall be charged to operating expenses as issued for use. However, the net charge to operating expense for any asset used, consumed or abandoned shall be limited to the difference between the cost incurred in acquisition and any related accrued depreciation.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 25, Jan. 3, 1977; ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-15 Contingent assets and contingent liabilities.

Contingent assets and contingent liabilities shall not be included in the body of the balance sheet but shall be explained in the footnotes to the financial statements.

[ER-980, 42 FR 25, Jan. 3, 1977]

Sec. 2-16 Notes to financial statements.

All matters which are not clearly identified in the body of the financial statements but which may influence materially interpretations or conclusions which may reasonably be drawn in regard to financial condition or earnings position shall be clearly and completely stated as footnotes to the financial statements.

Sec. 2-17 Revenue and accounting practices.

(a) Revenue accounting practices shall conform to the provisions of account 2160, Air Traffic Liability.

(b) Each route air carrier shall physically verify the reliability of its passenger revenue accounting practice at least once each accounting year.

(c) For those carriers who use the yield or average-fare method to determine earned revenue, the analysis supporting the verification shall include:

(1) The cutoff date for the liability to be verified; such cutoff date shall be at the end of a calendar month.

(2) The number of months after the cutoff date during which documents were examined to verify the liability; the number of months after the cutoff date during which documents are examined shall not exceed the maximums set forth below:

Class of carrier	Maximum months [1]
TWA and Pan American	18
Trunks (except TWA and Pan American)	12
All other route air carriers	6

[1] Applies only to carriers on a yield or average-fare basis.

(3) The nature of the documents which were examined for purposes of the verification.

(4) The totals for each of the various types of documents examined, on actual or sampling basis.

(5) A description of the sampling technique and conversion to totals, if sampling was employed.

(6) The amount and basis for all estimates employed in the verification.

(7) The amount of resulting adjustments and the quarter in which such adjustments were, or are to be, made in the accounts.

(d) For those carriers who use the sales-lift match method to determine earned revenue, the analysis supporting the physical inventory verification shall include:

(1) The cutoff date for the liability to be verified; such cutoff date shall be at the end of a calendar month.

(2) A trial balance as of the cutoff date of all subaccounts supporting the Air Traffic Liability control account; the subsidiary trial balance must agree with the Air Traffic Liability control account or a reconciliation statement furnished.

(3) A statement to the effect that a sales listing of the value of all unmatched auditor coupons has been compiled and compared to the general ledger control figure; the statement required by this subparagraph shall indicate whether or not the value of the unmatched coupons is in agreement with the general ledger. If the sales listing is not in agreement with the Air Traffic Liability control account, the amount of such difference shall be shown on such statement.

[ER-948, 41 FR 12290, Mar. 25, 1976, as amended by ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-18 Transactions between members of an affiliated group.

(a) Unless otherwise approved by the Board's Director, Bureau of Carrier Accounts and Audits, transactions between the regulated activity of an air carrier and activities conducted by nontransport divisions or other corporate members of an affiliated group shall be recorded by the air carrier as provided in paragraphs (b) through (e) of this section 2-18.

(b) Charges for services and assets purchased by or transferred to a regulated activity of an air carrier from other activities of an affiliated group shall be recorded initially in the accounts of the regulated air carrier activity at their invoice price, if determined from a prevailing price list held out to the general public in the normal course of business. Where the services and assets received by the regulated activity of the air carrier are not marketed by the affiliated supplier to the general public under a prevailing price list, the charges recorded by the air carrier activity for such services and assets shall be the lower of their cost to the originating activity of the affiliated group (less all applicable valuation allowances) or their estimated fair market value. In the case of charges against income for services received, as distinguished from charges for property and equipment or other assets acquired, any difference in the amount recorded and the consideration given by the air carrier shall be entered in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit. In the case of property and other assets acquired, any difference between the amount recorded and the consideration given by the air carrier shall be entered in appropriate subaccounts of account 1890 Other Assets and Deferred Charges, paralleling subaccount 88.1 Intercompany Transaction Adjustment—Credit and subaccount 89.1 Intercompany Transaction Adjustment—Debit, and shall be cleared to such income accounts through periodic amortization at rates coinciding with those applied to other associated assets.

(c) The cost, less all associated valuation allowance accumulations, of services and assets sold by or transferred from the regulated activity of an air carrier to other activities of an affiliated group shall be charged by the air carrier to either applicable transport-related revenues or capital gain income accounts, as appropriate. Where such services and assets are reflected in price lists held out to general public, the associated revenues shall be recorded at the rates, fares or charges contained therein in the appropriate transport-related services, capital gains or air transport income accounts. Where no prevailing price list is applicable, the associated revenue shall be recorded at the higher of cost or estimated fair market value of the asset or service involved. Any difference between the revenue so recorded and the agreed consideration to the air carrier shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or subaccount 89.1 Intercompany Transaction Adjustment—Debit.

(d) Income taxes shall be allocated among the transport entities of the air carrier, its nontransport divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by an air carrier and other members of an affiliated group, the income tax expense to be recorded by the air carrier shall be the same as would result if determined for the air carrier separately for all time periods, except that the tax effect of carryback and carryforward operating losses, investment tax credits, or other tax credits generated by operations of the air carrier shall be recorded by the air carrier during the period in which applied in settlement of the taxes otherwise atrributable to any member, or combination of members, of the affiliated group. Any difference between the income tax so recorded and the amount at which settlement is to to made shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit, as is appropriate.

(e) The principles set forth in this section 2-18 shall apply equally to corporations, proprietorships, partnerships, or other forms of business organizations.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 25, Jan. 3, 1977; ER-1401, 50 FR 238, Jan. 3, 1985]

Sec. 2-19 [Reserved]

Sec. 2-20 Accounting for leases.

(a) *Accounting by lessees.* (1) All leases shall be classified as either a capital or operating lease.

(2) The lessee shall record a capital lease as an asset (Account 1695.1, Capital Leases—Flight Equipment, or Account 1695.2, Capital Leases—Other Property and Equipment) and an obligation (Account 2080, Current Obligations under Capital Leases, or Account 2280, Noncurrent Obligations under Capital Leases), at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any profit thereon. However, if the amount so determined exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation shall be the fair value.

(3) Except for land, lessees shall amortize, by charging either Account 7076.1, Amortization—Capitalized Flight Equipment, or Account 7076.2, Amortization—Capitalized Other Property and Equipment, and crediting either Account 1696.1, Accumulated Amortization—Capitalized Flight Equipment, or Account 1696.2, Accu-

mulated Amortization—Capitalized Other Property and Equipment, the asset recorded under a capital lease as follows: (i) If the lease either transfers ownership of the property to the lessee by the end of the lease term or contains a bargain purchase option, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policies for owned assets or (ii) if the lease does not meet either of the preceding criteria, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy except that the period of amortization shall be the lease term.

(4) During the capital lease term, each minimum lease payment shall be allocated between a reduction of the obligation (Account 2080, Current Obligations under Capital Leases) and interest expense (Account 8181.2, Interest Expense—Capital Leases) so as to produce a constant periodic rate of interest on the remaining balance of the obligation.

(5) A termination of a capital lease shall be accounted for by removing the asset and obligation, with gain or loss recognized for the difference.

(6) Rental on an operating lease shall be charged to expense over the lease term as it becomes payable.

(b) *Accounting by lessors.* (1) All leases shall be classified as either a sales-type lease, direct financing lease, or operating lease. For accounting and reporting purposes, all expenses related to the conduct of leasing operations should be matched with revenue related to such operations in the nonoperating category.

(2) Sales-type leases shall be accounted for by the lessor as follows:

(i) The minimum lease payments plus the unguaranteed residual value accruing to the benefit of the lessor shall be recorded as the gross investment in the lease.

(ii) The difference between the gross investment in the lease and the sum of the present values of the two components of the gross investment shall be recorded as unearned income. The net investment in the lease shall consist of the gross investment less the unearned income. The unearned income shall be amortized to income over the lease term so as to produce a constant periodic rate of return on the net investment in the lease. Contingent rentals, including rentals based on variables such as the prime interest rate, shall be credited to income when they become receivable.

(iii) The present value of the minimum lease payments computed at the interest rate implicit in the lease shall be recorded as the sales price. The cost or carrying amount, if different, of the leased property, plus any initial direct costs, less the present value of the unguaranteed residual value accruing to the benefit of the lessor, computed at the interest rate implicit in the lease, shall be charged against income in the same period.

(iv) A termination of the lease shall be accounted for by removing the net investment from the accounts, recording the lease asset at the lower of its original cost, present fair value, or present carrying amount, and the net adjustment shall be charged to income of the period.

(3) Direct financing leases shall be accounted for by the lessor as follows:

(i) The minimum lease payments plus the unguaranteed residual value accruing to the benefit of the lessor shall be recorded as the gross investment in the lease.

(ii) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. The net investment in the lease shall consist of the gross investment less the unearned income. Initial direct costs shall be charged against income as incurred, and a portion of the unearned income equal to the initial direct costs shall be recognized as income in the same period. The remaining unearned income shall be amortized to income over the lease term so as to produce a constant periodic rate of return on the net investment in the lease. Contingent rentals, including rentals based on variables such as the prime interest rate, shall be credited to income when they become receivable.

(4) Operating leases shall be accounted for as follows: (i) The leased property shall be depreciated following the lessor's normal depreciation

policy; (ii) rent shall be reported as income over the lease term as it becomes receivable according to the provisions of the lease; and (iii) initial direct costs shall be deferred and allocated over the lease term in proportion to the recognition of rental income.

(c) *Accounting for leased terminal space and other airport facilities.* Leases involving terminal space and other airport facilities which are owned by a governmental unit or authority shall be classified as operating leases when:

(1) The economic life of the leased facilities for purposes of classifying the lease is essentially indeterminate; (2) the concept of fair value is not applicable to the lease; and (3) the lease does not provide for a transfer of ownership or a bargain purchase option.

(d) *Accounting for leveraged leases.* (1) From the standpoint of the lessee, leveraged leases shall be accounted for as accounted for in the same manner as non-leveraged leases. (See paragraph (a) of this section.)

(2) From the standpoint of the lessor, leveraged leases shall be accounted for as follows:

(i) The lessor shall record the investment in a leveraged lease net of the non-recourse debt. The net of the balances of the following accounts shall represent the initial and continuing investment in leveraged leases:

(A) Rentals receivable, net of that portion of the rental applicable to principal and interest on the non-recourse debt; (B) a receivable for the amount of the investment tax credit to be realized on the transaction; (C) the estimated residual value of the leased asset; (D) unearned and deferred income consisting of (*1*) the estimated pretax lease income (or loss), after deducting initial direct costs, remaining to be allocated to income over the lease term and (*2*) the investment tax credit remaining to be allocated to income over the lease term. The investment in leveraged leases less deferred taxes arising from differences between pretax accounting income and taxable income shall represent the lessor's net investment in leveraged leases.

(ii) Given the original investment and using the projected cash receipts and disbursements over the term of the lease, the rate of return on the net investment in the years in which it is positive shall be computed. The rate is that rate which when applied to the net investment in the years in which the net investment is positive will distribute the net income to those years and is distinct from the interest rate implicit in the lease. In each year, whether positive or not, the difference between the net cash flow and the amount of the income recognized, if any, shall serve to increase or reduce the net investment balance. The net income recognized shall be composed of three elements: Two of which, pretax lease income (or loss) and investment tax credit, shall be allocated in proportionate amounts from the unearned and deferred income included in the net investment; the third element is the tax effect of the pretax lease income (or loss) recognized, which shall be reflected in tax expense for the year. The tax effect of the difference between pretax accounting income (or loss) and taxable income (or loss) for the year shall be charged or credited to deferred taxes.

(iii) If the projected net cash receipts over the term of the lease are less than the lessor's initial investment, the deficiency shall be recognized as a loss at the inception of the lease. Likewise, if any any time during the lease term the application of the method prescribed in paragraphs (d)(2) (i) and (ii) of this section would result in a loss being allocated to future years, that loss shall be recognized immediately.

(iv) Any estimated residual value and all other important assumptions affecting estimated total net income from the lease shall be reviewed at least annually. If during the lease term the estimate of the residual value is determined to be excessive and the decline in the residual value is judged to be other than temporary or if the revision of another important assumption changes the estimated total net income from the lease, the rate of return and the allocation of income to positive investment years shall be recalculated from the inception of the lease. The accounts constituting the net investment balance shall be adjusted to conform to the recalculated balances, and the change in the net investment shall be recognized as a gain or loss in the year in which the assumption is changed. An upward adjustment of the estimated residual value shall not be made.

(v) For accounting and reporting, all expenses related to the conduct of leasing operations should be matched with revenues related to such operations in the nonoperating category.

[ER-1013, 42 FR 37513, July 21, 1977, as amended by ER-1401, 50 FR 239, Jan. 3, 1985]

Sec. 2-21 Accounting for troubled debt restructurings.

(a) *Accounting by debtors.* (1) A gain on the restructuring of debt shall be recognized in accordance with paragraph (a)(6) of this section when the debtor transfers assets to the creditor in full settlement of the debt. The gain shall equal the differecnce between the carrying amount of the payable and the fair value of the assets transferred. A gain or loss on the transfer of assets measured by the difference between the fair value and the book value of the assets transferred shall be recognized and recorded in account 88.6 Capital Gains and Losses—Other.

(2) A gain on the restructuring of debt shall be recognized in accordance with paragraph (a)(6) of this section when the debtor transfers an equity interest to the creditor in full settlement of the debt. The gain shall be equal to the amount that the carrying amount of the payable exceeds the fair value of the equity interest transferred.

(3) The modification of the terms of the debt in a troubled debt restructuring may take any or a combination of the following forms:

(i) Reduction of the stated interest rate or accrued interest; (ii) reduction of the face amount or the maturity amount of the debt; or (iii) extension of the maturity date at a stated interest rate which is lower than the current market rate for new debt with similar risk. When the terms of the debt are modified so that the total future principal and interest payments are not less than the recorded amount of the payable, the effects of the restructuring shall be accounted for prospectively from the time of the restructuring by adjusting the effective interest rate so that it equates the present value of the future cash payments specified by the new terms with the carrying amount of the payable. If the total future principal and interest payments are less than the recorded amount of the payable, the amount of the payable shall be reduced so that it equals the total future principal and interest payments specified by the new terms and a gain shall be recognized in accordance with paragraph (a)(6) of this section which equals the amount of the reduction. In this case, all future principal and interest payments shall be treated as reductions of the payable and none shall be designated as interest. If the restructuring of the payable involves indeterminate future cash payments, no gain on the restructuring of the debt shall be recognized as long as the maximum total future cash payments may exceed the carrying amount of the payable.

(4) When there is a combination involving both the transfer of assets or equity interests and the modification of the terms of the debt, the carrying amount of the payable shall be reduced by the total fair value of those assets or equity interests. The difference between the fair value and the carrying amount of the assets transferred shall be recognized as a gain or loss on the transfer of assets and recorded in account 88.6 Capital Gains and Losses—Other. The remaining balance of the payable shall be accounted for as discussed in paragraph (a)(3) of this section.

(5) All legal fees and other direct costs incurred to effect a troubled debt restructuring shall be deducted when measuring the gain on restructuring, or, if no gain is recognized, they shall be included in expense for the period.

(6) Gains recognized on the restructuring of debt shall be aggregated and included in measuring net income for the period. If material, the aggregate amount, net of any tax effect, should be recorded in account 96 Extraordinary Items. If not, it should be record-

ed in account 88.9 Other Miscellaneous Nonoperating Credits.

(7) The following information shall be disclosed on Schedule P-2 Notes to CAB Form 41 Report for all troubled debt restructurings occurring during the current period:

(i) A description of the principal changes in terms and/or the major features of settlement for each restructuring;

(ii) The aggregate gain on restructuring of payables and the related income tax effect;

(iii) The aggregate net gain or loss on the transfer of assets;

(iv) The extent to which amounts contingently payable are included in the carrying amount of restructured payables; and

(v) The total amount contingently payable on restructured payables and the conditions under which the amounts would be payable or forgiven.

(b) *Accounting by creditors.* (1) A loss on the restructuring of debt shall be recognized in accordance with paragraph (b)(6) of this section when the debtor transfers assets to the creditor in full settlement of the debt to the extent that his recorded investment in the receivable exceeds the fair value of the assets received. The assets shall be recorded in the books of account as if they had been acquired for cash.

(2) A loss on the restructuring of debt shall be recognized in accordance with paragraph (b)(6) of this section when the debtor transfers an equity interest to the creditor in full settlement of the debt to the extent that the recorded investment in the receivable exceeds the fair value of the equity interest. The equity interest shall be recorded in the books of account as if it had been acquired for cash.

(3) The modification of the terms of the debt in a troubled debt restructuring may take any or a combination of the following forms:

(i) Reduction of the stated interest rate or accrued interest; (ii) reduction of the face amount or the maturity amount of the debt; or (iii) extension of the maturity date at a stated interest rate which is lower than the current market rate for new debt with similar risk. When the terms of the debt are modified so that the total future principal and interest receipts are not less than the recorded investment in the receivable, the effects of the restructuring shall be accounted for prospectively from the time of restructuring by adjusting the effective interest rate to equate the present value of the future cash receipts specified by the new terms with the recorded investment in the receivable. When the terms of the debt are modified such that the total future principal and interest receipts are less than the recorded investment in the receivable, the amount of the receivable shall be reduced so that it equals the total future principal and interest receipts specified by the new terms and a loss shall be recognized in accordance with paragraph (b)(6) of this section which is determined by the amount of the reduction. In this case, all future principal and interest receipts shall be treated as reductions of the receivable and none shall be designated as interest. A loss shall not be recognized on a restructuring involving indeterminate future cash receipts as long as the minimum future cash receipts specified by the new terms at least equal the recorded investment in the receivable.

(4) When the troubled debt restructuring involves both the transfer of assets or equity interests and the modification of the terms of the debt, the recorded investment in the receivable shall first be reduced by the fair value of the assets or equity interests received. The remaining portion of the receivable shall be accounted for as discussed in paragraph (b)(3) of this section.

(5) All legal fees and other direct costs incurred to effect a troubled debt restructuring shall be expensed when incurred.

(6) Losses recognized on the restructuring of debt shall be included in account 89.9 Other Miscellaneous Nonoperating Debits to the extent that they are not offset against valuation accounts, such as account 1290 Allowance for Uncollectible Accounts.

(7) The following information shall be disclosed on Schedule P-2 Notes to CAB Form 41 Report for each major category of receivables whose terms

were modified in the current period such that the effective interest rate is less than the rate that the creditor would be willing to accept for a new receivable with comparable risk. The first three disclosure requirements listed below need not be followed if the effective interest rate for the modified receivable is greater than or equal to the rate that the creditor would be willing to accept for a new receivable with comparable risk:

(i) The aggregate recorded investment;

(ii) The gross interest income that would have been recorded in the period if the restructured receivables had been current according to their original terms;

(iii) The amount of interest income on the affected receivables included in the net income for the period; and

(iv) The amount of any commitments to lend additional funds to debtors owing receivables whose terms have been modified in a troubled debt restructuring.

[ER-1076, 43 FR 46295, Oct. 6, 1978]

BALANCE SHEET CLASSIFICATIONS

Section 3—Chart of Balance Sheet Accounts

[See footnotes at end of table]

Name of account	General classification	
Current assets:		
Cash		1010
Short-term investments		1100
Notes receivable		1200
Accounts receivable		1270
Allowance for uncollectible accounts		1290
Spare parts and supplies		1300
Allowance for obsolescence—Spare parts and supplies		1311
Prepaid items		1410
Other current assets		1420
Investments and special funds:		
Investments in associated companies		1510
Investments in investor controlled companies		1510.1
Investments in other associated companies		1510.2
Advances to associated companies		1510.3
Other investments and receivables		1530
Special funds		1550
Property and equipment		1600-1700
	Operating	Nonoperating
Airframes	1601	1701
Airframes	1601.1	1701.1
Unamortized airframe overhauls	1601.2	1701.2
Aircraft engines	1602	1702
Aircraft engines	1602.1	1702.1
Unamortized aircraft engine overhauls	1602.2	1702.2
Improvements to leased flight equipment	1607	1707
Flight equipment rotable parts and assemblies	1608	1708
Airframe parts and assemblies	[1] 1608.1	[1] 1708.1
Aircraft engine parts and assemblies	[1] 1608.5	[1] 1708.5
Other parts and assemblies	[1] 1608.9	[1] 1708.9
Flight equipment	1609	1709
Allowance for depreciation:		
Airframes	1611	1711
Aircraft engines	1612	1712
Improvements to leased flight equipment	1617	1717
Flight equipment rotable parts and assemblies	1618	1718
Flight equipment airworthiness allowance	[2] 1629	[2] 1729
Equipment	1630	1730
Furniture, fixtures and office equipment	1636	1736
Improvements to leased buildings and equipment	1639	1739
	General classification	
Buildings	1640	1740
Maintenance buildings and improvements	1640.1	1740.1
Other buildings and improvements	1640.9	1740.9
Ground property and equipment	1649	1749
Allowance for depreciation:		
Equipment	1650	1750
Improvements to leased buildings and equipment	1654	1754
Furniture, fixtures, and office equipment	1656	1756
Buildings	1660	1760
Maintenance buildings and improvements	1660.1	1760.1
Other buildings and improvements	1660.9	1760.9
Allowance for depreciation of flight equipment and ground property and equipment, and amortization of overhaul and airworthiness costs	1668	1768
Land	1678	1778

[See footnotes at end of table]

Name of account	General classification	
Equipment purchase deposits and advance payments	1665	1785
Construction work in progress	1689	1789
Leased property under capital leases	1695	1795
Capital leases—flight equipment	1695.*1*	1795.*1*
Capital leases—other property and equipment	1695.*2*	1795.*2*
Leased property under capital leases, accumulated amortization	1696	1796
Accumulated amortization—capitalized flight equipment	1696.*1*	1796.*1*
Accumulated amortization—capitalized other property and equipment	1696.*2*	1796.*2*
Property on operating-type lease to others and property held for lease		1797
Property on operating-type lease to others and property held for lease, accumulated depreciation		1798
Other assets:		
Long-term prepayments		1820
Unamortized developmental and preoperating costs		1830
Other assets and deferred charges		1890
Current liabilities:		
Current maturities of long-term debt		2000
Notes payable:		
Banks		2005
Other		2015
Trade accounts payable		2021
Accounts payable—other		2025
Current obligations under capital leases		2080
Accrued salaries, wages		2110
Accrued vacation liability		2120
Accrued interest		2125
Accrued taxes		2130
Dividends declared		2140
Air traffic liability		2160
Other current liabilities		2190
Noncurrent liabilities:		
Long-term debt		2210
Advances from associated companies		2240
Pension liability		2250
Noncurrent obligations under capital leases		2280
Other noncurrent liabilities		2290
Deferred credits:		
Deferred income taxes		2340
Deferred investment tax credits		2345
Other deferred credits		2390
Stockholders' equity:		
Preferred stock		2820
Common stock		2840
Additional capital invested		2890
Premium on capital stock		2890.*1*
Discount on capital stock		2890.*2*
Other capital stock transactions		2890.*3*
Retained earnings		2900
Treasury stock		2960

[1] Prescribed for group II and group III air carriers only.

[2] At the option of the air carrier, these accounts may be assigned Nos. 2629 and 2729, respectively, for accounting purposes.

Note: Digits to right of decimals and italicized codes established for CAB control purposes only.

[ER-1401, 50 FR 239, Jan. 3, 1985]

Section 4—General

(a) The balance sheet accounts are designed to show the financial condition of the air carrier as at a given date, reflecting the asset and liability balances carried forward subsequent to the closing or constructive closing of the air carrier's books of account.

(b) The balance sheet accounts prescribed in this system of accounts for each air carrier group are set forth in Section 3, Chart of Balance Sheet Accounts. The balance sheet elements to be included in each account are presented in section 6 and the balance sheet groupings to be accorded each account are set forth in section 5.

Section 5—Balance Sheet Account Groupings

Sec. 5-1 Current assets.

(a) Include in this classification all resources which may reasonably be expected to be realized in cash or sold or consumed within one year, such as unrestricted cash, those assets that are readily convertible into cash or are held for current use in operations, and current claims against others to the extent settlement is reasonably assured, except that securities of others classified in investment and special fund accounts at date of acquisition need not be reclassified until disposition thereof.

(b) Perpetual inventories of all materials, supplies, lubricating oils, motor fuels and flight equipment expendable parts shall be maintained and shall be physically verified at least annually. Any shortage, overage, shrinkage, etc., shall be adjusted by charges or credits to the appropriate expense account.

(c) Items of general current asset characteristics which are not expected to be realized or consumed within one year may be included in this classification provided the noncurrent portion is not substantial in amount and classification as a current item will not impair the significance of working capital.

Sec. 5-2 Investments and special funds.

(a) Include in this classification long-term investments in securities, securities which are not readily marketable, funds set aside for specific purposes or involving restrictions preventing current use, contract performance deposits and other securities, receivables, or funds not available for current operations.

(b) Investments in companies shall be recorded at cost, plus the equity in undistributed earnings or losses since acquisition, except as provided in paragraph (c) of this section. Investments in all other associated or nonassociated companies shall be recorded at cost, except as provided in paragraph (c).

(c) Permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100 Nonoperating Income and Expense—Net.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12292, Mar. 25, 1976; ER-960, 42 FR 27, Jan. 3, 1977; ER-1022, 42 FR 46495, Sept. 16, 1977]

Sec. 5-3 Property and equipment.

(a) All investments of the air carrier in land and units of tangible property and equipment shall be included within this general classification.

(b) The cost of properties covered by conditional sales contracts shall be recorded in the appropriate property and equipment accounts of the buyer, and removed from the property and equipment accounts of the seller, as at the date on which possession is delivered to the buyer unless there is material uncertainty as to the complete consummation of the transaction.

(c) Property obtained under capital leases shall be recorded in Accounts 1695 and 1795 for operating and nonoperating property, respectively, while property on an operating-type lease to others and property held for lease shall be recorded in Account 1797.

(d) The general classification "Property and Equipment" shall be subclassified as between "Operating Property and Equipment" and "Nonoperating Property and Equipment." "Operating Property and Equipment" shall encompass items used in air transportation services and services incidental thereto. "Nonoperating Property and Equipment" shall encompass investments in property and equipment not separately accounted for within a nontransport division but assigned to other than air transportation and its incidental services, and property and equipment held for future use.

(e) Operating and nonoperating property and equipment shall be accounted for separately in accordance with the following instructions:

(1) Investment in property and equipment shall be recorded at total cost including all expenditures applicable to acquisition, other costs of a preliminary nature, costs incident to placing in position and conditioning for operations and costs of additions, betterments, improvements and modifications.

(2) The cost of additions, betterments, improvements and modifications shall be charged to the balance sheet account in which the property or equipment to which related is carried. (See section 2-9 for applicable accounting policy.) The cost of parts and appurtenances removed, and the allowance for depreciation applicable thereto, shall be treated as for retired property and accounted for accordingly.

(3) If different classes of property and equipment chargeable to more than one property account are purchased for a single sum and the cost of each class cannot be definitely ascertained, apportionment shall be based upon the most accurate information available. If necessary, appraisals shall be made to establish the relative costs.

(4) If property and equipment is acquired as part of a business from another air carrier through consolidation, merger, or reorganization, pursu-

ant to a plan approved by the Civil Aeronautics Board, the costs and related allowances for depreciation as carried on the books of the predecessor company at the date of transfer shall be entered by the acquiring air carrier in the appropriate accounts prescribed for recording investments in tangible assets. Any difference between the purchase price of the property and equipment acquired and its depreciated cost at date of acquisition shall be recorded in balance sheet account 1890 Other Assets and Deferred Charges. Property acquired from an associated company shall also be accounted for in accordance with this paragraph unless otherwise approved by the Board.

(5) Upon disposal by sale, retirement, abandonment, dismantling, or otherwise, of equipment depreciated on a unit basis, the air carrier shall credit the accounts in which the costs related to the property or equipment are carried with the balances thereof; charge the related allowances for depreciation with the balances applicable to the property disposed of; and charge the cash proceeds of the sale or the value of salvaged material to the appropriate asset accounts. Where the sales price or salvage value less the cost of dismantling differs from the costs related to the property less accrued allowances for depreciation, such difference shall be recorded in the appropriate capital gain or loss accounts.

(6) Upon disposal by sale, retirement, abondonment, dismantling, or otherwise of property or equipment depreciated on a group basis, the air carrier shall credit the account in which the property or equipment is carried, and charge the related allowance for depreciation with the original cost thereof, less any salvage realized, regardless of the age of the item. No gain or loss is recognized on the retirement of individual items of property or equipment depreciated on a group basis. However, the proceeds from sales of scrapped parts and assemblies, which are accumulated and sold in lots for nominal amounts and without identification of the individual items, shall be credited to profit and loss account 18 Other Transport-Related Revenues and Expenses.

(7) If property is retired or disposed of as a result of major accident or other casualty, the costs related to such property, less accrued allowances for depreciation, shall be charged to balance sheet account 1890 Other Assets Pending Adjustments and Settlement of Insurance. The resulting profit or loss, after reflecting adjustments for insurance coverage shall be recorded as a capital gain or loss. If the air carrier has no option but to accept replacement by an equivalent unit, the book cost and accrued allowance for depreciation applicable to the unit disposed of shall be assigned to the new property or equipment. Where the air carrier has the option in settlement to select between replacement in kind and cash or its equivalent, the air carrier shall account for the property or equipment disposed of in accordance with paragraph (5) or (6) of this section 5-3(e). Any property or equipment purchased in replacement shall be recorded pursuant to paragraph (1) of this section 5-3(e).

(8) When property and equipment owned by the air carrier is applied as part payment of the purchase price of new property and equipment, the new property and equipment shall be recorded at its full purchase price provided an excessive allowance is not made for assets traded in, in lieu of price adjustments or discounts on the purchase price of assets acquired. The difference between the depreciated cost of assets applied as payment and the amount allowed therefor shall be treated as retirement gain or loss. When used tangible property is exchanged for other used tangible property and no other form of consideration is involved, the book cost less related allowance for depreciation of the property given in exchange shall be assigned to the property received. When the consideration consists of both cash or its equivalent and tangible property, and the cash or its equivalent is less than 25 percent of the fair market value of the total consideration, the entire transaction is to be treated as an exchange of property. The cost of the properties received by each party shall be the book cost less related allowance for depreciation of

the properties given in exchange, plus or minus the cash, or the cash value of any other consideration, paid or received. Capital gain or loss is not to be recorded on the books of either party, except to the extent that the additional cash or other consideration received exceeds the depreciated book cost of the properties given. When the additional cash, or the cash value of other consideration, is at least 25 percent of the fair market value, the transaction shall be treated as a purchase and sale. The property received by each party shall be entered on the books at its fair market value and the net increase or decrease in asset values resulting from the transaction shall be treated as capital gain or loss.

(9) The cost of property and equipment acquired shall, upon acquisition, be recorded in the appropriate classification specifically established for such property and equipment; *Provided*, That when operating property and equipment acquired requires conditioning or modification before placing in air transport or its transport-related services, the cost thereof and related conditioning and modification costs shall be accumulated in balance sheet account 1689 Construction Work in Progress. The total accumulated cost shall be transferred to the appropriate operating property and equipment account coincidentally with the placing of the property and equipment into regular air transport or transport-related services.

(10) When operating property or equipment is retired from air transportation or transport-related operations and retained by the air transportation or transport-related operations and retained by the air carrier, its cost, together with applicable allowances for depreciation, shall be transferred to balance sheet classification 1700 Nonoperating Property and Equipment. If property is transferred for exclusive use of nontransport divisions, the cost less related allowances for depreciation shall be recorded in balance sheet account 1510.3 Advances to Associated Companies.

(11) The air carrier shall maintain property and equipment records setting forth the description of all property and equipment recorded in balance sheet classifications 1600 and 1700 Property and Equipment. With respect to each unit or group of property or equipment, the record shall show the date of acquisition, the original cost, the cost of additions and betterments, the cost of parts retired, rates of depreciation, residual values not subject to depreciation, and the date of retirement or other disposition.

(12) Property and equipment loaned, in the custody of, or consigned to the air carrier without a purchase obligation, shall not be recorded in the same manner as similar classes or types of property purchased by the air carrier. The property and equipment accounts shall not be charged with the value of such property, and liability accounts shall not be established: *Provided, however*, That appropriate memoranda accounts may be maintained.

(13) Charges to the accounts prescribed in section 6 shall be made upon the basis of functions performed without regard to the location at which the equipment or property is installed or placed.

(14) Objective accounts shall be maintained for each class of property and equipment in accordance with the instructions set forth in section 6.

[ER-755, 37 FR 19726, Sept. 21, 1972 as amended by ER-980, 42 FR 27, Jan. 3, 1977; ER-1013, 42 FR 37514, July 21, 1977; ER-1401, 50 FR 240, Jan. 3, 1985]

Sec. 5-4 Property and equipment depreciation and overhaul.

(a) The balance sheet classificaton "allowance for depreciation" shall include the accumulation of all provisions for losses occurring in property and equipment from use and obsolescence. For example, it shall include allowances for depreciation established to record current lessening in service value due to wear and tear from use and the action of time and the elements, as well as losses in capacity for use or service occasioned by obsolescence, supersession, discoveries, change in popular demand, or the requirement of public authority. Residual values and rates for accrual of depreciation shall be calculated to prevent charging excessive or inadequate expense or the accumulation of inadequate or excessive allowances.

(b) Depreciation chargeable against operations shall be calculated from the date on which a building, structure, or unit of property is placed in or contributes to regular service and shall cease on the date such property is withdrawn from service by reason of sale, retirement, abandonment, or dismantling, or when the difference between the cost and residual value shall have been charged to expense.

(c) Property for which depreciation shall not be chargeable against operations shall include (1) land owned or held in perpetuity, and (2) expenditures on uncompleted units of property and equipment during the process of construction or manufacture.

(d) Rates of depreciation and undepreciable residual values applied to each class of depreciable property and equipment shall be calculated to distribute the estimated depreciable cost to operating expense accounts and other accounts over the estimated service life of the property and equipment in such manner as will prevent the charging of either excessive or inadequate expense or the accumulation of excessive or inadequate allowances (see section 2-14(a)) and fully recognize the extent to which all expenditures attaching to property and equipment are otherwise recoverable through income charges and disposal proceeds.

(e) Adjustments in rates of depreciation occasioned by changing conditions shall be applied in accordance with the general policies set forth in section 2-14.

(f) Airframe and aircraft engine overhauls shall be expensed directly as performed when this will produce a relatively equitable allocation of total maintenance costs between accounting years. In the event that direct expensing of overhauls will distort maintenance expense charges between calendar quarters, allowances may be established to equalize or distribute maintenance expense charges between calendar quarters of each accounting year in accordance with operations performed consistent with provisions of section 2-13(d). For the purposes of this system of accounts and reports, an airframe or aircraft engine "overhaul" shall be deemed to encompass the total of those inspections or replacements of major components performed in phases, or in one operation, as are required to be performed at specified maximum periodic intervals by the Civil Air Regulations to recertify that airframes or aircraft engines are in a completely airworthy condition. Costs which attach to the routine replacement of minor parts and servicing or inspection of air-frames and aircraft engines, performed on a recurrent but not scheduled basis, or on a scheduled basis without withdrawal from line service, to maintain airframes and aircraft engines, performed on a recurrent but not scheduled basis, or on a scheduled basis without withdrawal from line service, to maintain airframes and aircraft engines in an operating condition, shall not be considered to be "overhauls" and shall be expensed directly as ordinary recurrent maintenance. Extraordinary costs of material amounts associated with the renewal of major structural parts of airframes and aircraft engines beyond the scope of normal period overhauls, or which are incurred at periodic intervals approximating the depreciable service life of the airframe and aircraft engine types to which related, shall not be considered overhauls. Such costs shall be accounted for as restoration of assets chargeable to the related property accounts. The cost of components removed, together with related allowance, shall be treated as retired property and accounted for accordingly. In the event identification of the cost of the components removed is not feasible, the cost incurred in substituting components may be charged against the related allowance for depreciation.

(g) The accounting procedures in this paragraph (g) shall be observed as a consistent practice for all airframe or aircraft engine types (both owned and leased) for which the direct expensing of overhaul costs as incurred will distort total maintenance expense between accounting years. However, if an air carrier has been using the reserve method of accounting for overhauls prior to January 1, 1976, an election may be made to continue the use of this method for all existing aircraft types and for all aircraft of the same type even if acquired after January 1, 1976, but, for new types of aircraft acquired after this date, the following procedures shall be observed.

(1) When the period benefited by the performance of an overhaul is greater than one accounting year and overhauls are scheduled in such a manner that the direct expensing of overhauls as performed will not result in an equitable allocation of total maintenance expense between accounting years, the costs of such overhauls shall be deferred and amortized over the period benefited. An overhaul permits the use of an airframe or aircraft engine for subsequent additional periods in conformity with overhaul procedures approved by the Federal Aviation Administration. The period benefited by an overhaul is the authorized interval until the related overhaul procedures are required to be performed again. The costs of airframe and aircraft engine overhauls shall not be accrued in advance by charges to maintenance expense before the costs are incurred; except that, allowances for equalization may be established pursuant to section 2-13(d) to distribute expense charges between calendar quarters of each accounting year in accordance with operations performed.

(2) When overhauls are performed, the related costs of labor, materials, outside overhauls, and maintenance burden shall be charged to the applicable direct maintenance and maintenance burden objective expense accounts as incurred. With respect to those airframe or aircraft engine types for which overhauls are being deferred and amortized, a project cost ledger shall be maintained to control and identify overhauls costs, and the accumulated overhauls costs shall be debited each month to appropriate subaccounts of the related airframe, aircraft engine, or leasehold improvement accounts with a corresponding credit to account 72.3 Airframe Overhauls Deferred or account 72.8 Aircraft Engine Overhauls Deferred.

(3) Upon completion of each overhaul phase or project, the deferred costs shall be amortized to account 72.3 Airframe Overhauls Deferred or to account 72.8 Aircraft Engine Overhauls Deferred over the authorized interval until the related overhaul procedures are required to be performed again.

(4) When improvements and betterments of owned airframes or aircraft engines are effected in conjunction with overhauls of such property, the costs related to such improvements or betterments shall be charged to the appropriate asset subaccount for depreciation over the remaining service life.

(5) Upon retirement of owned airframes or aircraft engines, the applicable unamortized overhaul costs shall be transferred, along with the cost and related allowances for depreciation of the property retired, to profit and loss subaccount 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other.

(h) In accordance with the provisions of section 22(d) each air carrier shall file with the Civil Aeronautics Board a statement fully describing its plans of accounting for airframe and aircraft engine overhauls. The required statement shall indicate for each airframe or aircraft engine type whether the costs of overhauls related thereto are, as a matter of consistent practice, expensed directly or deferred and amortized. If deferred and amortized, the statement shall indicate whether projects are established for individual units or on a group basis for specific types of airframes or aircraft engines, the types of cost deferred, the basis for maintenance burden rates, the time between overhauls, and the amortization period and basis.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12292, Mar. 25, 1976; ER-980, 42 FR 28, Jan. 3, 1977; ER-1027, 42 FR 60128, Nov. 25, 1977; ER-1401, 50 FR 240, Jan. 3, 1985]

Sec. 5-5 Other assets.

Include in this classification all debit balances in general clearing accounts, including charges held in suspense pending receipt of information necessary for final disposition, prepayments chargeable against operations over a period of years, capitalized expenditures of an organizational or developmental character, unamortized debt expense, property acquisition adjustments, the cost of patents, copyrights and miscellaneous intangibles, and other noncurrent assets which cannot be recorded elsewhere within the chart of accounts. Deferred charges having a definite time incidence shall be amortized over the periods to which they apply.

[ER-1401, 50 FR 240, Jan. 3, 1985]

Sec. 5-6 Current liabilities.

Include in this classification all debts or obligations the liquidation or payment of which is reasonably expected to require the use, within one year, of existing resources of a type which are properly classifiable as current assets, or the creation of other current liabilities. Current liabilities shall include payables incurred in the acquisition of materials, collections received in advance of performance of services, debts accruing from expenses incurred from operations and other liabilities that are regularly and ordinarily subject to current liquidation.

Sec. 5-7 Noncurrent liabilities.

(a) This classification shall include all debts or obligations the liquidation or payment of which is not reasonably expected to require the use within one year of existing resources of a type which are property classifiable as current assets or the creation of current liabilities. Noncurrent liabilities shall include mortgages, bonds and debentures maturing more than one year from the date of the bayance sheet, and other obligations not payable within twelve months. Expense on long-term debt assumed by the air carrier shall be recorded as a deferred charge and discounts or premiums on nontrade debt should be recorded as a deduction from or addition to the face amount of the liability through the use of a subaccount in the account used to record the liability. Subaccounts shall be maintained in such a manner as to enable identification of each discount or premium with the debt issue to which it relates. Such discounts or premiums shall be amortized through profit and loss account 84 Amortization of Debt Discount Premium and Expense on a basis which applies a constant rate of interest to the balance outstanding at the beginning of each quarter. When debt securities are issued with warrants to purchase stock, the portion of the proceeds attributable to the warrants shall be accounted for as paid-in capital by crediting account 2890 Additional Capital Invested.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this classification. In addition, this classification shall include short-term debt obligations when both the intent to refinance the short-term obligations on a long-term basis is established and the ability to consummate this refinancing can be demonstrated.

(c) Gains or losses on liquidation of bonds, debentures or other debt securities of the air carrier shall be entered in profit and loss classification 8100 Nonoperating Income and Expense—Net Gains and losses or adjustments to liabilities accrued from expenses incurred in operations shall be entered in the expense accounts initially charged.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 28, Jan. 3, 1977]

Sec. 5-8 Deferred credits and commitments and contingent liabilities.

(a) Include in the deferred credit classification all credit balances in general clearing accounts, including credits held in suspense pending receipt of information necessary for final disposition.

(b) Deferred credits having a definite time incidence shall be amortized over the periods to which they apply.

(c) Include in the commitments and contingent liabilities classification all anticipated losses from commitments or contingencies that are not accruable under the conditions presented in section 2-5 Liability accruals but for which there is a reasonable possibility that a loss has been incurred. The nature and extent of these commitments and contingencies shall be disclosed in a footnote.

[ER-980, 42 FR 29, Jan. 3, 1977]

Sec. 5-9 Stockholder equity.

(a) This general classification shall include all items which record the aggregate interests of holders of the air carrier's stock in assets owned by the air carrier.

(b) The general classification "Stockholders' Equity," shall be subdivided between:

(1) "Total Paid-In Capital" which represents direct contributions of the stockholders;

(2) "Retained Earnings," which represents the amount of income retained from the operation of the air carrier; and

(3) "Treasury Stock," which represents the cost to the air carrier of capital stock issued by the air carrier that has been reacquired and is held for disposition.

(c) The "Total Paid-In Capital" classification shall be subdivided between "Total Capital Stock," which shall include the par or stated value of capital stock issued or the cash value of the consideration actually received in case of stock having no par or stated value, and "Additional Capital Invested," which shall include the excess (premium) or deficiency (discount) of the cash value of the consideration received from the issue of any capital stock having par or stated value, donations by stockholders, adjustments of capital resulting from reorganization or recapitalization, and gains or losses from reacquisition and resale or retirement of the air carrier's capital stock.

(d) The records supporting the entries in the accounts included in the "Additional Capital Invested" balance sheet classification shall be maintained with sufficient particularity to identify amounts applicable to each series and class of stock affected.

(e) Discount applicable to a particular class or series of capital stock shall not be offset against premiums applicable to another class or series of capital stock. At the option of the air carrier discount applicable to a particular class or series of stock may be offset against premiums related to that class or series of stock.

(f) Losses arising from the reacquisition and resale or retirement of the air carrier's capital stock may be allocated between "additional capital invested" for the same issue of capital stock and "retained earnings." Gains on treasury stock shall be credited to "Additional Capital Invested."

(g) The "Retained Earnings" balance sheet classification shall reflect the balance of net profits, income, and gains of the air carrier from the date of incorporation after deducting losses, distributions to stockholders, and the net unrealized loss on marketable equity securities included in noncurrent assets. In cases where a deficit has been absorbed by a reduction of "Additional Capital Invested" as a result of a restatement of capital stock or retained earnings, a new retained earnings account shall be established, dated to show that it runs from the effective date of the restatement and this dating shall be disclosed in financial statements until such time as the effective date no longer possesses special significance.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 240, Jan. 3, 1985]

Section 6—Objective Classification of Balance Sheet Elements

SOURCE: ER-980, 42 FR 29, Jan. 3, 1977, unless otherwise noted.

CURRENT ASSETS

1010 Cash.

(a) Record here all general and working funds available on demand as of the date of the balance sheet which are not formally restricted or earmarked for specific objectives. Funds deposited for special purposes which are to be satisfied within one year shall be included in account 1100 Short-term Investments and funds restricted as to general availability, which are not offset by current liabilities, shall be included in account 1550 Special Funds.

(b) Each air carrier shall subdivide this account in such manner that the balance can be readily segregated as between balances in United States currency and the balances in each foreign currency.

1100 Short-term Investments.

(a) Record here the cost of short-term investments such as special deposits and United States Government securities, any other temporary cash investments, and the allowance for unrealized gain or loss on current marketable equity securities.

(b) Special deposits for more than one year, not offset by current liabilities, shall not be included in this account but in account 1550 Special Funds.

(c) This account should be charged or credited for discount or premium on United States Government securities or other securities which should be amortized to profit and loss account 80 Interest Income.

1200 Notes Receivable.

(a) Record here current notes receivable including those from associated companies, company personnel, and all other sources.

(b) Balances of notes payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 241, Jan. 3, 1985]

1270 Accounts Receivable.

(a) Record here current accounts receivable including those due from the United States Government, foreign governments, associated companies, company personnel, and other amounts due for the performance of air transportation.

(b) Amounts due from the United States Government shall be maintained in such fashion as will clearly and separately identify service mail pay receivables, subsidy receivables and other than mail transportation receivables.

(c) Amounts due for the performance of air transportation shall include gross amounts due whether settled through airline clearing houses or with individual carriers. Amounts payable collected as agent shall not be credited to this account, but should be included in account 2190 Other Current Liabilities.

(d) Balances payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 241, Jan. 3, 1985]

1290 Allowance for Uncollectible Accounts.

(a) Record here accruals for estimated losses from uncollectible accounts.

(b) All accounts against which allowances have been established shall be examined quarterly for the purpose of redetermining the basis of accruals to be applied to subsequent accounting periods and the reasonableness of allowances already provided.

1300 Spare parts and supplies.

(a) Record here the cost of:

(1) Flight equipment replacement parts of a type which ordinarily would be recurrently expended and replaced rather than repaired and reused;

(2) Unissued fuel inventories for use in the overall or system operations of the carrier. Adjustments of inventories for aircraft fuel due to retroactive price increases and decreases shall not be entered in this account but in profit and loss account 45, Aircraft Fuels and Oils; and

(3) Unissued and unapplied materials and supplies held in stock such as unissued shop materials, expendable tools, stationery and office supplies, passenger service supplies, and restaurant and food service supplies.

(b) Costs paid by the air carrier such as transportation charges and customs duties; excise, sales, use and other taxes; special insurance; and other charges applicable to the cost of spare parts and supplies shall be charged to this account when they can be definitely allocated to specific items or units of property. If such costs cannot be so allocated, or if of minor significance in relation to the cost of such property, such amounts may be charged to balance sheet account 1890 Other Assets and Deferred Charges and cleared either by a suitable "loading charge" as the parts are used or by current charges to appropriate expense or property accounts; so long as the method of application does not cause material distortion in operating expenses from one accounting period to another.

(c) Reusable spare parts and supplies recovered in connection with construction, maintenance, or retirement of property and equipment shall be included in this account at fair and reasonable values but in no case shall such values exceed original cost. Recoveries of normally reparable and reusable parts of a type for which losses in value may be covered on a practical basis through valuation allowance provisions shall be included in this account on an original cost basis. Scrap and nonusable parts, expensed from this account and recovered, shall be included at net amounts realizable therefrom with contra credit to the expense accounts initially charged.

(d) The cost of rotable parts and assemblies of material value included in this account which ordinarily are repaired and reused and possess a service life approximating that of the primary property types to which related shall not be recorded in this account but in balance sheet account 1608 Flight Equipment Rotable Parts and Assemblies. For purposes of identifying rotable parts and assemblies of insignificant unit value which may be included in this account, a reasonable maximum unit value limitation may be established.

(e) Any losses sustained or gains realized upon the abandonment or other disposition of flight equipment expendable parts shall be taken up as capital gains or losses in the periods in which sustained or realized. (See balance sheet account 1311).

(f) Items in this account shall be charged to appropriate expense accounts as issued for use. Profit and loss on sales of inventory items as a routine service to others shall be included in profit and loss accounts 14 General Service Sales—Associated Companies, or 16 General Service Sales—Outside, and the parts sold shall be removed from this accounts at full cost.

(g) Materials and supplies held in small supply and purchased currently may be charged to appropriate expense accounts when purchased.

(h) An allowance for inventory adjustment applicable to materials and supplies is prohibited. Items in this account shall be charged to appropriate expense accounts as issued for use.

(i) Subaccounts shall be established within this account for the separate recording of each class or type of spare parts and supplies.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 241, Jan. 3, 1985]

1311 Allowance for Obsolescence—Spare Parts and Supplies.

(a) Accruals shall be made to this account when allowances are established for losses in the value of expendable parts. The accruals to this account shall be made by charges to profit and loss account 73 Provisions for Obsolescence and Deterioration—Expendable Parts. Records shall be maintained with sufficient detail to permit association of the allowances with each class or type of expendable parts.

(b) The accruals to this account shall be based upon a predetermination by the air carrier of that portion of the total inventory of each class and type of expendable parts against which an allowance for loss is to be accrued. Expendable parts issued for use in operations shall be charged to operating expenses as issued and shall not be charged to this account. If at the end of any calendar year the amount of the allowance exceeds the product of the applicable inventory for the year determined consistently on a year-end or average basis, and the sum of the standard percentage accrual rates for all prior years including the current, the allowance shall be adjusted downward by the amount of the excess. Such adjustments shall be charged to this account and credited to profit and loss account 73 Provisions for Obsolescence and Deterioration—Expendable Parts.

(c) Where changing conditions necessitate a revision or adjustment in rates of accrual, such revision or adjustment shall be made applicable to current and subsequent accounting periods and shall not be applied retroactively to prior accounting periods. Following retirement of airframe or aircraft engine types to which related, any balance remaining in this account shall be offset against related balances carried in balance sheet account 1300 Spare Parts and Supplies and the net cleared to profit and loss accounts 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 241, Jan. 3, 1985]

1410 Prepaid Items.

Record here prepayments of obligations which if not paid in advance would require the expenditure of working capital within one year, such as prepaid rent, insurance, taxes, interest, etc. Unexpired insurance and miscellaneous prepayments applicable to periods extending beyond one year where significant in amount shall be charged to balance sheet account 1820 Long-Term Prepayments.

1420 Other Current Assets.

Record here current assets not provided for in balance sheet accounts 1010 to 1410, inclusive.

INVESTMENTS AND SPECIAL FUNDS

1510 Investments in Associated Companies.

(a) Record here net investments in associated companies.

(b) [Reserved]

(c) This account shall be subdivided by all air carrier groups as follows:

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1027, 42 FR 60128, Nov. 25, 1977; ER-1188, 45 FR 48870, July 22, 1980]

1510.1 Investments in Investor Controlled Companies.

Record here the cost of investments in investor controlled companies, except as provided in section 5-2(c), plus the equity in undistributed earnings or losses since acquisition. In the event dividends are declared by such companies, the air carrier shall credit this account for its share in dividends declared and debit balance sheet account 1270 Accounts Receivable. This account shall separately state: (a) The cost of such investments at date of acquisition and (b) the equity in undistributed earnings or losses since acquisition.

1510.2 Investments in Other Associated Companies.

Record here the cost of investments in associated companies other than investor controlled companies. Cost shall represent the amount paid at the date of acquisition without regard to subsequent changes in the net assets through earnings or losses of such associated companies, except as provided in section 5-2(c).

1510.3 Advances to Associated Companies.

(a) Record here advances, loans, and other amounts not settled currently with investor controlled and other associated companies and nontransport divisions. Balances receivable from and payable to different associated companies and different nontransport divisions shall not be offset.

(b) In the case of nontransport divisions three subaccounts shall be maintained: (1) Net investment; (2) current net profit or loss; and (3) current accounts receivable or payable between the air carrier and the nontransport division.

(c) Each nontransport division shall be accounted for separately in net amounts receivable which shall be included in this account or net amounts payable which shall be included in balance sheet account 2240 Advances from Associated Companies.

[ER-980, 42 FR 29, Jan. 3, 1977. Redesignated by ER-1401, 50 FR 241, Jan. 3, 1985]

1530 Other Investments and Receivables.

(a) Record here notes and accounts receivable not due within one year, investments in securities issued by others, investments in leveraged leases, the noncurrent net investment in direct financing and sales-type leases, and the allowance for unrealized gain or loss on noncurrent marketable equity securities. Securities held as temporary cash investments shall not be included in this account but in balance sheet account 1100 Short-Term Investments. Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

(b) For investments in leveraged leases, four subaccounts shall be maintained for: (1) Rentals receivable, net of that portion of the rental applicable to principal and interest on the non-recourse debt; (2) a receivable for the amount of the investment tax credit to be realized on the transaction; (3) the estimated residual value of the leased asset; and (4) unearned and deferred income consisting of the estimated pretax lease income (or loss), after deducting initial direct costs, remaining to be allocated to income over the lease term and the investment tax credit remaining to be allocated to income over the lease term.

(c) For the net investment in direct financing and sales-type leases which is not reasonably expected to be amortized within one year, three subaccounts shall be maintained for: (1) The minimum lease payments receivable (debit); (2) the unguaranteed residual value accruing to the benefit of the lessor (debit); and (3) unearned income (credit).

[ER-1401, 50 FR 241, Jan. 3, 1985]

1550 Special Funds.

Record here special funds not of a current nature and restricted as to general availability. Include items such as sinking funds, cash and securities posted with courts of law, employee's funds for purchase of capital stock, pension funds under the control of the air carrier and equipment purchase funds.

OPERATING PROPERTY AND EQUIPMENT

1601 Airframes.

(a) Record here the total cost to the air carrier of airframes of all types and classes, as provided in section 5-3, together with the full complement of instruments, appurtenances and fixtures comprising complete airframes including accessories necessary to the installation of engines and flight control and transmission systems, except as specifically provided otherwise in accounts 1602 and 1607. Also record here in separate subaccounts and costs of airframe overhauls accounted for on a deferral and amortization basis as provided in section 5-4(g).

(b) Airframes designed to permit multiple payload configurations shall be recorded in this account at the total cost of the maximum complement of instruments, appurtenances, and fixtures used in the air carrier's operations.

(c) This account shall be subdivided as follows by all air carriers:

1601.1 Airframes.
1601.2 Unamortized Airframe Overhauls.

1602 Aircraft Engines.

(a) Record here the total cost to the air carrier of complete units of aircraft engines of all types and classes, as provided in section 5-3, together with a full complement of accessories, appurtenances, parts, and fixtures comprising fully assembled engines as delivered by the engine manufacturer ready for operation in test but without the accessories necessary to its installation in airframes. Also record here in separate subaccounts the costs of aircraft engine overhauls accounted for on a deferral and amortization basis as provided in section 5-4(g).

(b) This account shall be subdivided as follows by all air carriers:

1602.1 Aircraft Engines.
1602.2 Unamortized Aircraft Engine Overhauls.

1607 Improvements to Leased Flight Equipment.

Record here the total cost to the air carrier incurred in connection with modification, conversion or other improvements to leased flight equipment as provided in section 5-3. Also record here in separate subaccounts the costs of airframe and aircraft engine overhauls of leased aircraft accounted for on a deferral and amortization basis as provided in section 5-4(g).

1608 Flight Equipment Rotable Parts and Assemblies.

(a) Record here the total cost to the air carrier of all spare instruments, parts, appurtenances and subassemblies related to the primary components of flight equipment units provided for in balance sheet accounts 1601 through 1607, inclusive, as provided in section 5-3. This account shall include all parts and assemblies of material value which are rotable in nature, are generally reserviced or repaired, are used repeatedly and possess a service life approximating that of the property type to which they relate. Items of an expendable nature which generally may not be repaired and reused, shall not be recorded in this account but in account 1300 Spare Parts and Supplies. Except for recurrent service sales, flight equipment parts recorded in this account shall be accounted for in accordance with the instructions related to property and equipment generally and shall not be charged to operating expense as retired. Profit or loss on sales of parts as a routine service to others shall be included in profit and loss account 14 General Service Sales—Associated Companies, or 16 General Service Sales—Outside, and parts sold shall be removed from this account at full cost irrespective of any allowance for depreciation which has been provided.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

1608.1 Airframe Parts and Assemblies.

1608.5 Aircraft Engine Parts and Assemblies.

1608.9 Other Parts and Assemblies.

1609 Flight Equipment.

This classification is established only for purposes of control by the Civil Aeronautics Board and shall reflect the total cost of property and equipment of all types and classes used in the in-flight operations of aircraft.

1629 Flight Equipment Airworthiness Allowances.

(a) Record here accumulated provisions for overhauls of flight equipment as provided in section 5-4 (f) and (g).

(b) Separate subaccounts shall be established for recording accumulated provisions related to each type of airframe and aircraft engine, respectively.

NOTE: At the option of the air carrier the number "2629" may be assigned to this account for accounting purposes. However, for purposes of reporting on CAB Form 41, the balance in this account shall be reported under account "1629."

1630 Equipment.

Record here the total cost to the air carrier of ground equipment to include the following:

(a) Equipment assigned to aircraft or active line operations as opposed to items held in stock for servicing passengers, as provided in section 5-3, such as broilers, bottleware, dishes, food boxes, thermos jugs, blankets, first aid kits, etc. Spare items shall be carried in balance sheet account 1300 Spare Parts and Supplies and shall be charged directly to expense upon withdrawal from stock for replacing original complements.

(b) Equipment used in restaurants and kitchens, as provided in section 5-3.

(c) Equipment of all types and classes, as provided in section 5-3, used in enplaning and handling traffic and in handling aircraft while on ramps, including motorized vehicles used in ramp service. Classes of equipment used interchangeably between handling aircraft on ramps and in maintaining aircraft may be classified in accordance with normal predominant use.

(d) Nonairborne equipment of all types and classes, as provided in section 5-3, used in meteorological and communication services which is not a part of buildings.

(e) Equipment of all types and classes, as provided in section 5-3, including motorized vehicles used in engineering and drafting services and in maintaining, overhauling, repairing and testing other classes of property and equipment.

(f) Property and equipment of all types and classes, as provided in section 5-3, used in ground and marine transportation services.

(g) Property and equipment of all types and classes, as provided in section 5-3, used in storing and distributing fuel, oil and water, such as fueling trucks, tanks, pipelines, etc.

(h) All other ground equipment of all types and classes, as provided in section 5-3, such as medical, photographic, and employee's training equipment, and airport and airway lighting equipment.

1636 Furniture, Fixtures and Office Equipment.

Record here the total cost to the air carrier of furniture, fixtures and office equipment of all types and classes, wherever used or located, as provided in section 5-3.

1639 Improvements to Leased Buildings and Equipment.

Record here the total cost to the air carrier incurred in connection with modification, conversion, or other improvements to leased buildings and equipment.

1640 Buildings.

Record here the total cost to the air carrier of owned buildings, structures and equipment and related improvements, as provided in section 5-3. Each air carrier shall maintain the following subaccounts in which the values fairly assignable to maintenance and other operations shall be separately recorded:

1640.1 Maintenance Buildings and Improvements.
1640.9 Other Buildings and Improvements.

1649 Ground Property and Equipment.

This classification is established only for purposes of control by the Civil Aeronautics Board and shall reflect the total cost of property and equipment of all types and classes other than flight equipment, equipment purchase deposits and advance payments, land, and work in progress.

1668 Allowance for Depreciation of Flight Equipment and Ground Property and Equipment and Amortization of Overhaul and Airworthiness Costs.

(a) Record in accounts 1611 and 1618, inclusive, and 1650 through 1660, inclusive, accruals for depreciation of flight equipment and ground property and equipment.

(b) As set forth in section 3, Chart of Balance Sheet Accounts, separate accounts shall be established for depreciation allowances to parallel balance sheet accounts 1601 through 1608 established for recording the cost of flight equipment and accounts 1630 through 1640 established for recording the cost of ground property and equipment.

(c) This account shall be used as a control account and shall reflect the total amounts recorded in balance sheet accounts 1611 through 1618 and 1650 through 1660 in addition to account 1629 Flight Equipment Airworthiness Allowance.

1679 Land.

Record here the initial cost and the cost of improving land, as provided in section 5-3.

1685 Equipment Purchase Deposits and Advance Payments.

Record here the amount of purchase deposits and advance payments made to acquire operating property and equipment under outstanding purchase commitments. Funds set aside but not deposited or used as advance payments should not be included in this account but in Account 1550 Special Funds.

1689 Construction Work in Progress.

(a) Record here the direct and indirect costs to the air carrier accumulated to the date of the balance sheet in connection with constructing and readying for installation in operations, for property and equipment of all types and classes as provided in section 5-3. Where properly includable in the property and equipment classification, record here also the accumulated costs for uncompleted overhauls of airframes, aircraft engines, or other material units of property.

(b) At the option of the air carrier this account may be used as a clearing account for recording the cost of property and equipment acquisitions prior to a distribution thereof to the appropriate property accounts, whether or not conditioning or modification is necessary before placing in service.

1695 Leased Property under Capital Leases.

(a) Record here the total cost to the air carrier for all property obtained under capital leases as provided in section 2-20(a).

(b) This account shall be subdivided by all air carrier groups as follows:

1695.1 Capital Leases—Flight Equipment.
1696.2 Capital Leases—Other Property and Equipment.

[ER-1401, 50 FR 241, Jan. 3, 1985]

1696 Leased Property Under Capital Leases—Accumulated Amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases as provided in section 2-20(a).

(b) This account shall be subdivided by all air carrier groups as follows:

1696.1 Accumulated Amortization—Capitalized Flight Equipment.
1696.2 Accumulated Amortization—Capitalized Other Property and Equipment.

[ER-1401, 50 FR 241, Jan. 3, 1985]

NON-OPERATING PROPERTY AND EQUIPMENT

1700 Non-operating Property and Equipment.

The total cost to the air carrier of nonoperating property and equipment and related allowances for depreciation shall be recorded in balance sheet accounts 1701 through 1796 which, as set forth in section 3, Chart of Balance Sheet Accounts, parallel balance sheet accounts 1601 through 1689, for recording the cost of operating property and equipment. In addition to these accounts, Account 1797 has been established for recording the cost of property on operating-type leases to others and property held for lease; any accumulated depreciation applicable to the assets contained in Account 1797 shall be recorded in Account 1798.

[ER-1013, 42 FR 37515, July 21, 1977]

1797 Property on Operating-type Lease to Others and Property Held for Lease.

Record here the total cost to the air carrier of property on operating-type lease to others and property held for lease as provided in section 2-20.

[ER-1013, 42 FR 37515, July 21, 1977]

1798 Property on Operating-type Lease to Others and Property Held for Lease—Accumulated Depreciation.

Record here accruals for depreciation of property on operating-type leases to others and property held for lease as provided in section 2-20.

[ER-1013, 42 FR 37515, July 21, 1977]

OTHER ASSETS

1820 Long-Term Prepayments.

Record here prepayments of obligations applicable to periods extending beyond one year such as payments on leased property and equipment and other payments and advances for rents, rights, or other privileges.

1830 Unamortized Developmental and Preoperating Costs.

(a) Record here costs accumulated and deferred by the air carrier pertaining to the development of new routes or extension of existing routes, preparation for operation of new routes subsequent to certification by the Civil Aeronautics Board, the integration of new types of aircraft or services, and other preparations for substantial alterations in operational characteristics.

(b) Costs chargeable to this account shall include items directly related to each specific developmental or preoperating project, such as travel and incidental expenses, legal expenses, flight crew training expenses, and regulatory proceedings expenses. Expenses which would be otherwise incurred in the normal air transport operations conducted by the air carrier during the current accounting period shall not be allocated to developmental or preoperating projects and charged to this account. Nor shall this account be credited for revenues from aircraft flights of a developmental or preoperating character the operating costs of which are charged to this account. Any such revenues shall be included in the profit and loss account for the respective type of revenue. This account shall include charges for only those costs associated with projects directed at obtaining new operating authority or expanding the physical capacity of the air carrier and shall not include costs incurred for the purpose of generating revenues through rate adjustment. Accordingly, costs associated with regulatory proceedings involving route awards or amendments, whether successful or unsuccessful to the carrier, shall be included in this account whereas costs associated with regulatory proceedings involving rate or other revenue generation matters shall be charged to appropriate expense accounts.

(c) Records shall be established for new routes or extensions of existing routes to record separately: (1) Costs incurred in acquiring or applying for the routes, including all costs incurred prior to certification by the Board and inauguration of service by the air carrier, and (2) costs incurred after revenue operations begin over the new routes or extensions.

(d) Subclassifications shall be established to record for each developmental project the period covered and the purpose of each item of expense. Each air carrier shall classify the costs of all projects included in this account between: (1) Those related and contributing to the normal air transportation services currently conducted by the air carrier; (2) those related to services conducted by the air carrier which are extraneous to or are not otherwise related to the air transportation services currently conducted; and (3) those held in suspense pending status determination in terms of possible contribution to the air transportation services and inauguration of the service or operation to which related.

(e) Amounts included in this account which contribute to or protect the position of the normal air transportation services currently conducted by the carrier shall be amortized to profit and loss account 74 Amortization, unless otherwise approved or directed by the Civil Aeronautics Board. Other amounts included in this account shall be amortized or charged to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits.

1890 Other Assets and Deferred Charges.

(a) Record here other assets and deferred charges not provided for elsewhere.

(b) Record here debits, the proper final disposition of which cannot be determined until additional information has been received. This account shall include the accumulated cost of labor, materials and outside services used in the process of manufacturing flight equipment expendable parts and materials and supplies for stock, the accumulated cost of jobs in process for others, projects to be charged to expense upon completion. This account shall also include unamortized debt expense, property acquisition adjustments and intangible assets.

(c) This account shall be charged with property loss and other costs related to casualties and credited with recoveries from purchased insurance and salvage. A debit or credit balance in this account related to property retired as a result of a casualty shall be recorded in profit and loss account 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other; however, any balances related to property not retired or to other casualties shall be recorded in profit and loss account 58 Injuries, Loss and Damage. Proceeds from purchased insurance for property damage, received prior to repair of such damage, shall not be credited to this account but to balance sheet account 2390 Other Deferred Credits pending repair. The records for each major casualty shall be kept in such manner as to clearly disclose insurance recoveries and the total costs, which shall include charges for the depreciated cost of property damaged or destroyed, costs for clearing wrecks and damaged property and equipment, including salaries and wages for the repair thereof, and payments for damages to property of others. The cost of casualties shall not be charged directly against retained earnings or appropriations thereof, but shall be cleared through the applicable profit and loss accounts in accordance with the foregoing.

(d) Record here the unamortized debt expense related to the assumption by the air carrier of debt of all types and classes. Amounts recorded shall be amortized to profit and loss account 84 Amortization of Debt Discount, Premium and Expense.

(e) Unamortized debt expense shall not include the excess of the par value of debt securities over the cash value of consideration received. Instead, discounts shall be recorded in a subaccount of the related liability.

(f) Record here the cost of patents, copyrights and other intangible properties, rights and privileges acquired as a part of a business from other air carriers and other intangibles not provided for elsewhere. This account shall be subdivided to reflect the nature of each intangible asset included in this account.

(g) Record here the difference between the purchase price to the air carrier of property and equipment acquired as a part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the Civil Aeronautics Board, and the depreciated cost to the predecessor company at date of acquisition. Record here also such differences relating to purchases of property and equipment from associated companies unless other treatment is approved by the Board. Separate subaccounts shall be established to record the amounts applicable to each such acquisition.

(h) Balances in this account relating to property acquisition adjustments shall be amortized by charges to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits unless otherwise directed or approved by the Civil Aeronautics Board.

[ER-1401, 50 FR 242, Jan. 3, 1985]

CURRENT LIABILITIES

2000 Current Maturities of Long-term Debt.

Record here the face value or principal amount of debt securities issued or assumed by the air carrier which is payable within 12 months of the balance sheet date unless such debt is to refinance, or where payment is to be made from assets of a type not properly classifiable as current.

2005 Notes Payable—Banks.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year to a bank or another financial institution with the exception of current maturities of long-term debt which should be included in account 2000.

2015 Notes Payable—Other.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year to an associated company or party other than a financial institution.

2021 Trade Accounts Payable.

Record here all accounts payable within one year which accrued from generally recognized trade practices.

2025 Accounts Payable—Other.

Record here all accounts payable within one year which are not provided for in accounts 2000 to 2021, inclusive.

2080 Current Obligations under Capital Leases.

Record here the total current liability applicable to property obtained under capital leases as provided in Section 2-20(a).

[ER-1013, 42 FR 37515, July 21, 1977; 42 FR 38555, July 29, 1977]

2110 Accrued Salaries, Wages.

Record here amounts accrued for unpaid compensation to personnel, which have been charged to profit and loss or capitalized, as compensation for the period in which accrued.

2120 Accrued Vacation Liability.

(a) Record here accruals of liabilities for personnel vacations. All vacation policies, plans, or agreements whether oral or written shall be accounted for on an accrual basis whenever a lag exists between vacations earned and vacations taken, thereby resulting in a liability against the carrier under the applicable policy, plan or agreement.

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag, if such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts. (See section 2-5 for applicable accounting policy.)

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1027, 42 FR 60128, Nov. 25, 1977; ER-1188, 45 FR 48870, July 22, 1980]

2125 Accrued Interest.

Record here interest payable within one year for all outstanding obligations.

2130 Accrued Taxes.

(a) Record here accruals for currently payable income and other forms of taxes which constitute a charge borne by the air carrier as opposed to those collected as an agent for others. Provisions for deferred taxes shall be accrued in accordance with the provisions of section 2-6 Income Tax Accruals.

(b) At the option of the air carrier, investment tax credits may be treated as a reduction of income tax expense in the year they are actually realized (flow-through method) or they may be deferred and amortized over the useful life of the property to which it relates (deferred method).

(c) Air carriers electing to account for the investment tax credit by the flow-through method shall credit profit and loss subaccount 91.2 Investment Tax Credits Utilized or profit and loss account 97 Income Taxes Applicable to Extraordinary Items and debit this account with the amount of investment tax credit utilized in the current accounting period.

(d) Air carriers electing to account for the investment tax credit by the deferred method shall, concurrent with the above entry set forth in subsection (c), debit profit and loss subaccount 93.1 Investment Tax Credits Deferred or profit and loss account 97 Income Taxes Applicable to Extraordinary Items and Credit balance sheet account 2345 Deferred Investment Tax Credits with the investment tax credit utilized as a reduction of the current year's tax liability but deferred for accounting purposes. The investment tax credits deferred in account 2345 shall be amortized to profit and loss subaccount 93.2 Amortization of Deferred Investment Tax Credits over the service life of the related property.

(e) The amount of any potential investment tax credit applicable to property placed in service during each accounting year and not used as an offset against tax liability or the deferred income tax balance as provided in section 6-2340 shall be debited to a memorandum account under balance sheet account 2390 Other Deferred Credits titled "Investment Tax Credits Available" and shall be credited to a memorandum account also under balance sheet account 2390 "Unrealized Investment Tax Credits." As investment tax credits are utilized in the reduction of tax liabilities or deferred taxes, these two memorandum accounts shall be adjusted to reflect the balance of unused and unexpired credits.

(f) Each air carrier shall disclose in the footnotes of its CAB Form 41 for each calendar quarter whether utilized credits are accounted for by the flow-through method or the deferred method. The method selected shall be consistently followed by the carrier.

2140 Dividends Declared.

Record here in separate subdivisions for each class and series of capital stock, all dividends declared but unpaid on capital stock.

2160 Air Traffic Liability.

(a) Record here balances representing the value of unused transportation sold. Transportation sold includes both sales for transportation to be provided by the air carrier and transportation to be provided by another air carrier.

(b) Earned revenue, determined by the yield or average fare method or by the sales-lift-match method, shall be consistently and periodically cleared by debit to this account, and by credit to the appropriate profit and loss revenue account. Amounts receivable for transportation to be provided by the air carrier shall be debited to balance sheet account 1270 Accounts Receivable.

(c) Carriers who determine earned revenue on a yield or average fare method may not accrue income during the accounting year in anticipation of a favorable annual physical inventory determination, nor for unused or unpresented tickets.

(d) Subaccounts to this account shall be established to record balances pertaining to passenger and cargo transportation sold, respectively, and separately to sales in scheduled and nonscheduled services.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 242, Jan. 3, 1985]

2190 Other Current Liabilities.

Record here current and accrued liabilities, including amounts payable collected as an agent, not provided for in accounts 2110 to 2160, inclusive.

NON-CURRENT LIABILITIES

2210 Long-term Debt.

Record here the face value or principal amount of debt securities issued or assumed by the air carrier and held by other than associated companies, which has not been retired or cancelled and is not payable within 12 months of the balance sheet date, except as provided in section 5-7.

2240 Advances from Associated Companies.

Record here net amounts due associated companies and nontransport divisions for notes, loans and advances which are not settled currently. Balances payable to and receivable from different associated companies shall not be offset.

2250 Pension Liability.

Record here the liability of the air carrier under employee pension plans, to which either or both employees and the air carrier contribute, if the plan is administered by the air carrier.

2280 Non-current Obligations under Capital Leases.

Record here the total noncurrent liability applicable to property obtained under capital leases as provided in section 2-20(a).

[ER-1013, 42 FR 37515, July 21, 1977]

2290 Other Noncurrent Liabilities.

Record here noncurrent liabilities not provided for in balance sheet accounts 2210 to 2280, inclusive, such as the liability for installments received on capital stock from company personnel who are not bound by legally enforceable subscription contracts, accruals for personnel dismissal liability, and accruals of other demonstrable miscellaneous noncurrent liabilities.

[ER-1401, 50 FR 242, Jan. 3, 1985]

DEFERRED CREDITS

2340 Deferred Income Taxes.

(a) Record here credits and debits representing the net tax effect of material timing differences originating and reversing in the current accounting period giving appropriate recognition to the portion of investment tax credits which would have been allowed if taxes were based on pretax accounting income by a reduction of the deferred tax provision. Loss carryforwards shall be accounted for in accordance with section 2-6(d).

(b) This account shall be credited or debited as appropriate and profit and loss subaccount 92.1 Current Provision for Deferred Taxes or profit and loss account 97 Income Taxes Applicable to Extraordinary Items shall be credited or debited each quarter with the income elements for which the related income tax effect is deferred. The tax effects of timing differences may be computed individually or by similar groups of timing differences. The tax effect of timing for similar groups may be computed using separate computations for the tax effect of originating differences at current rates and for the tax effect of reversing differences at tax rates in effect at the beginning of the period; or, a single computation, at current tax rates for the net cumulative effect of both originating and reversing differences. The method chosen shall be consistently applied from period to period.

(c) This account shall be credited or debited as appropriate and profit and loss subaccount 92.2 Application of Taxes Deferred shall be credited or debited each quarter with deferred tax amounts previously accrued which are allocable to income of the current period.

(d) Upon adjustment or elimination of the income element for which income taxes are deferred, the related deferred tax balance included in this account shall be correspondingly adjusted or eliminated by a credit or debit as appropriate to profit and loss account 92.3 Adjustment of Deferred Taxes.

(e) Any net debit balance in this account shall be treated for statement purposes as a special subaccount of balance sheet account 1890 Other Assets.

(f) All adjustments shall be effected through appropriate credits or debits to profit and loss subaccount 92.3 Adjustment of Deferred Taxes. Full explanation of each adjustment shall be set forth in the footnotes to CAB Form 41 for the period in which the adjustment is made.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1013, 42 FR 37515, July 21, 1977. Redesignated by ER-1401, 50 FR 242, Jan. 3, 1985]

2345 Deferred Investment Tax Credits.

Record here investment tax credits utilized as reduction of tax liabilities, when the carrier exercises the option to defer such credits for amortization over the service life of the related equipment (see section 6-2130).

2390 Other Deferred Credits.

Record here credits, not provided for elsewhere, the proper final disposition of which cannot be effected until additional information has been received.

STOCKHOLDERS' EQUITY

2820 Preferred Stock.

Record here in separate subdivisions for each class and series, the par or stated value of preferred capital stock issued or in the case of no-par stock without stated value, the full consideration received.

2840 Common Stock.

Record here in separate subdivisions for each class and series, the par or stated value of common stock issued or in case of no-par stock without stated value, the full consideration received.

2860 Subscribed and Unissued Stock.

Record here in separate subdivisions for each class and series, the par or stated value, or the subscription price in the case of stock without par or stated value, of legally enforceable subscriptions to the capital stock of the air carrier.

2890 Additional Capital Invested.

(a) Record herein separate subdivisions for each class and series, the difference between the price at which capital stock is sold and the par or stated value of the stock; gains or losses arising from the reacquisition and the resale or retirement of each class and series of capital stock; donations; the excess of retained earnings capitalized over par or stated value of capital stock issued; adjustments in capital resulting from reorganization or recapitalization; and proceeds attributable to detachable stock purchase warrants related to debt issues. This account shall also include balances of contributions to the business enterprise of individual proprietors or partners.

(b) Each air carrier shall maintain the following subaccounts:

2890.1 *Premium on capital stock.* Record here in separate subdivisions for each class and series of capital stock issued the excess of the cash value of consideration received over the par or stated value and accrued dividends of stock issued together with assessments against stockholders representing payments required in excess of par or stated value.

2890.2 *Discount on capital stock.* Record here in separate subdivisions for each class and series of capital stock issued, the excess of the par or stated value over the cash value of consideration received, less accrued dividends. Discounts applicable to a particular class and series of capital stock may be offset against premiums from the same class and series of capital stock. Discounts and premiums on different classes and series of capital stock shall not be offset. The air carrier may, at its option, record in this subaccount commissions and expenses incurred in the issuance of capital stock and may charge balance sheet account 2900 Retained Earnings to the extent capital stock expense may exceed any existing balance of paid-in capital over the par or stated value of capital stock.

2890.3 *Other Capital Stock Transactions.* Record here in separate subdivisions for each class and series, the balance of credits arising from the reacquisition and resale or cancellation of capital stock, credits arising from a reduction in the par or stated value of capital stock or the net balance of credits or debits resulting from other paid-in capital transactions such as proceeds attributable to detachable stock purchase warrants related to debt issues, not provided for elsewhere, which is identified with a particular class and series of capital stock.

2900 Retained Earnings.

(a) Record here the net income or loss from operations of the air carrier and dividends declared on capital stock.

(b) This account shall not be charged with dividends on treasury stock. If a dividend is not payable in cash, the values entered in this account shall be completely described.

(c) Delayed credits or charges to income shall not be entered in this account directly but in appropriate profit and loss accounts.

(d) Net income or loss accounted for during the current fiscal year shall not be entered in this account until the close of the fiscal year. Individual proprietorships or partnerships may clear net income or loss accounted for during the year directly to balance sheet account 2890 Additional Capital Invested, or optionally, to this account for subsequent transfer to balance sheet account 2890 Additional Capital Invested.

(e) A separate subaccount to this account shall be maintained to record changes in the valuation of marketable equity securities included in noncurrent assets. Such changes shall be reflected in this subaccount to the extent the balance in this subaccount represents a net unrealized loss as of the current balance sheet date.

[ER-980, 42 FR 29, Jan. 3, 1977, as amended by ER-1401, 50 FR 242, Jan. 3, 1985]

2950 Net Unrealized Loss on Non-current Marketable Equity Securities.

Record here the changes in the valuation of marketable equity securities included in noncurrent assets. Such changes shall be reflected in this account to the extent the balance in this account represents a net unrealized loss as of the current balance sheet date.

2990 Treasury Stock.

(a) Charge here the cost of capital stock issued by the air carrier reacquired by it and not retired or canceled. Capital credits or debits resulting from the resale or retirement of capital stock held in this account shall be recorded as prescribed in paragraph (f) of section 5-9 Stockholder Equity.

(b) Separate records shall be established for each class and series of capital stock held in this account.

PROFIT AND LOSS CLASSIFICATION

Section 7—Chart of Profit and Loss Accounts

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
OPERATING REVENUES AND EXPENSES			
Transport revenues:			
01 Passenger:			
01.*1* Passenger—first class	31, 32	31, 32	31, 32.
01.*2* Passenger—coach	31, 32	31, 32	31, 32.
05 Mail:			
05.*1* Priority	31, 32	31, 32	31, 32.
05.*2* Nonpriority	31, 32	31, 32	31, 32.

Section 7—Chart of Profit and Loss Accounts—Continued

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
05.*3* Foreign	31, 32	31, 32	31, 32.
06 Property:			
06.*1* Freight	31, 32	31, 32	31, 32.
06.*2* Excess passenger baggage	31, 32	31, 32	31, 32.
07 Charter:			
07.*1* Passenger	32	32	32.
07.*2* Property	32	32	32.
19 Air transport—other:			
19.*1* Reservation cancellation fees	31, 32	31, 32	31, 32.
19.*2* Miscellaneous operating revenues	31, 32	31, 32	31, 32.
08 Public service revenues (subsidy)	48	48	48.
Transport-related revenues and expenses:			
09 In-flight sales:			
09.*1* Liquor and food—gross revenues	48	48	48.
09.*2* Movies and stereo—gross revenues	48	48	48.
09.*3* Other—gross revenues	48	48	48.
09.*4* Liquor and food—depreciation expense	71	71	71.
09.*5* Liquor and food—other expense	71	71	71.
09.*6* Movies and stereo—depreciation expense	71	71	71.
09.*7* Movies and stereo—other expense	71	71	71.
09.*8* Other—depreciation expense	71	71	71.
09.*9* Other—expense	71	71	71.
10 Restaurant and food service (ground):			
10.*1* Gross revenues	48	48	48.
10.*2* Depreciation expense	71	71	71.
10.*3* Other expenses	71	71	71.
11 Rents:			
11.*1* Gross revenues	48	48	48.
11.*2* Depreciation expense	71	71	71.
11.*3* Other expenses	71	71	71.
12 Limousine service:			
12.*1* Gross revenues	48	48	48.
12.*2* Depreciation expense	71	71	71.
12.*3* Other expenses	71	71	71.
13 Interchange sales:			
13.*1* Associated companies—gross revenues	48	48	48.
13.*2* Outside—gross revenues	48	48	48.
13.*3* Associated companies—depreciation expense	71	71	71.
13.*4* Associated companies—other expense	71	71	71.
13.*5* Outside—depreciation expense	71	71	71.
13.*6* Outside—other expense	71	71	71.
14 General service sales:			
14.*1* Associated companies—gross revenues	48	48	48.
14.*2* Outside—gross revenues	48	48	48.
14.*3* Associated companies—depreciation expense	71	71	71.
14.*4* Associated companies—other expense	71	71	71.
14.*5* Outside—depreciation expense	71	71	71.
14.*6* Outside—other expense	71	71	71.
15 Mutual aid:			
15.*1* Receipts	48	48	48.
15.*2* Payments	71	71	71.
16 Substitute (replacement) service:			
16.*1* Gross revenues	48	48	48.
16.*2* Expense	71	71	71.
17 Air cargo service:			
17.*1* Gross revenues	48	48	48.
17.*2* Depreciation expense	71	71	71.
17.*3* Other expense	71	71	71.
18 Other transport related items:			
18.*1* Gross revenues	48	48	48.
18.*2* Depreciation expense	71	71	71.
18.*3* Other expense	71	71	71.
19 Other operating revenues:			
19.*1* Reservations cancellation fees	31, 32	31, 32	31, 32.
19.*9* Miscellaneous operating revenues	31, 32, 41	31, 32, 41	31, 32, 41.

Section 7—Chart of Profit and Loss Accounts—Continued

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
Transport expenses:			
21 General management personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
23 Pilots and copilots	51	51	51.
24 Other flight personnel	51, 69	51, 55	51, 55.
25 Maintenance labor:			
25.*1* Labor—airframes and other flight equipment		52	52.
25.*2* Labor—aircraft engines		52	52.
25.*6* Labor—flight equipment	52		
25.*9* Labor—ground property and equipment	52, 53	52, 53	52, 53.
26 Aircraft and traffic handling personnel	69		
26.*1* General aircraft and traffic handling personnel		64, 67	61, 62, 63, 65.
26.*2* Aircraft control personnel		64	61.
26.*3* Passenger handling personnel		64, 67	62, 65.
26.*4* Cargo handling personnel		64, 67	62, 65.
28 Trainees, instructors and unallocated shop labor:			
28.*1* Trainees and instructors	51, 53, 69	51, 53, 55, 64,67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
28.*2* Unallocated shop labor	53	53	53.
30 Communications personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
31 Recordkeeping and statistical personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
32 Lawyers and law clerks	69	68	68.
33 Traffic solicitors	69	67	65.
34 Purchasing personnel	53, 69	53, 68	53, 68.
35 Other personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
36 Personnel expenses	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
37 Communications purchased	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
38 Light, heat, power, and water	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
39 Traffic commissions	69		
39.*1* Commissions—passenger		67	65.
39.*2* Commissions—property		67	65.
40 Legal fees and expenses	69	68	68.
41 Professional and technical fees and expenses	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
42 General services purchased—associated companies:			
42.*1* Airframe and other flight equipment repairs—associated companies.		52	52
42.*2* Aircraft engine repairs—associated companies		52	52.
42.*6* Flight equipment repairs—associated companies	52		
42.*7* Aircraft interchange charges—associated companies	51, 52	51, 52	51, 52.
42.*8* General interchange service charges—associated companies.	52, 69	52, 55, 64, 67, 68.	52, 55, 61, 62, 63, 65, 66, 68.
42.*9* Other services—associated companies	52, 53, 69	52, 53, 55, 64, 67, 68.	52, 53, 55, 61, 62, 63, 65, 66, 68.
43 General services purchased—outside:			
43.*1* Airframe and other flight equipment repairs—outside		52	52
43.*2* Aircraft engine repairs-outside	52	52	
43.*6* Flight equipment repairs—outside	52		
43.*7* Aircraft interchange charges—outside	51, 52	51, 52	51, 52.

Section 7—Chart of Profit and Loss Accounts—Continued

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
43.*8* General interchange service charges—outside	52, 69	52, 55, 64, 67, 68.	52, 55, 61, 62, 63, 65, 66, 68.
43.*9* Other services—outside	52, 53, 69	52, 53, 55, 64, 67, 68.	52, 53, 55, 61, 62, 63, 65, 66, 68.
44 Landing fees	69	64	61.
45 Aircraft fuels and oils	51		
45.*1* Aircraft fuels		51	51.
45.*2* Aircraft oils		51	51.
46 Maintenance materials:			
46.*1* Airframes and other flight equipment		52	52
46.*2* Aircraft engines		52	52.
46.*6* Flight equipment	52		
46.*9* Ground property and equipment	52, 53	52, 53	52, 53.
47 Rentals	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
49 Shop and servicing supplies	53, 69	53, 64	53, 61.
50 Stationery, printing, and office supplies	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
51 Passenger food expense	69	55	55.
53 Other supplies	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
54 Inventory adjustments	53, 69	53, 55	53, 55.
55 Insurance—general	51, 53, 69	51, 53, 68	51, 53, 68.
56 Insurance—traffic liability	69	55, 64	55, 62.
57 Employee benefits and pensions	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 66.
58 Injuries, loss and damage	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
59 Schedules and timetables	69	67	65, 66.
60 Advertising	69	67	66.
61 Foreign exchange gains and losses	69	68	68.
62 Other promotional and publicity expenses	69	67	66.
63 Interrupted trips expense	69	55	55.
64 Memberships	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
65 Corporate and fiscal expenses	69	68	66.
66 Uncollectible accounts	69	68	68.
67 Clearance, customs and duties	69	64	61, 62.
68 Taxes—payroll	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
69 Taxes—other than payroll	51, 69	51, 68	51, 68.
71 Other expenses	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66 68.
72 Aircraft overhauls	52, 53	52, 53	52, 53.
72.*1* Airworthiness allowance provisions—airframes	52, 53	52, 53	52, 53.
72.*3* Airframe overhauls deferred	52, 53	52, 53	52, 53.
72.*6* Airworthiness allowance provisions—aircraft engines	52, 53	52, 53	52, 53.
72.*8* Aircraft engine overhauls deferred	52, 53	52, 53	52, 53.
73 Provisions for obsolescence and deterioration—expendable parts:			
73.*1* Current provisions	70	70	70.
73.*2* Inventory decline credits	70	70	70.
74 Amortizations:			
74.*1* Developmental and preoperating expenses	70	70	70.
74.*2* Other intangibles	70	70	70.
75 Depreciation:			
75.*1* Airframes	70	70	70.
75.*2* Aircraft engines	70	70	70.

Section 7—Chart of Profit and Loss Accounts—Continued

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
75.*3* Airframe parts	70	70	70.
75.*4* Aircraft engine parts	70	70	70.
75.*5* Other flight equipment	70	70	70.
75.*6* Flight equipment	70	70	70.
75.*8* Maintenance equipment and hangers	70	70	70.
75.*9* General ground property	70	70	70.
76 Amortization expense, capital leases:			
76.*1* Amortization—capitalized flight equipment	70	70	70
76.*2* Amortization—capitalized other property and equipment	70	70	70
77 Uncleared expense credits:			
77.*8* Uncleared interchange expense credits	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
77.*9* Other uncleared expense credits	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
78 Direct maintenance—flight equipment	52	52	52.
79 Applied burden Dr/Cr:			
79.*6* Flight equipment	52 Dr, 53 Cr	52 Dr, 53 Cr	52 Dr, 53 Cr.
79.*8* General ground property	52 Dr, 53 Cr	52 Dr, 53 Cr	52 Dr, 53 Cr.
NONOPERATING INCOME AND EXPENSE			
81 Interest on long-term debt and capital leases:			
81.*1* Interest expense, long-term debt	81	81	81
81.*2* Interest expense, capital leases	81	81	81
82 Other interest:			
82.*1* Interest expense, short-term debt	81	81	81
83.*1* Imputed interest capitalized—credit	81	81	81
83.*2* Imputed interest deferred—debit	81	81	81
83.*3* Imputed interest deferred—credit	81	81	81
83.*4* Interest capitalized—credit	81	81	81
84.*1* Amortization of discount and expense on debt	81	81	81
84.*2* Amortization of premium on debt	81	81	81
85 Foreign exchange gains and losse	81	81	81
89 Other nonoperating income and expense-net:			
80.*0* Interest income	81	81	81
86.*0* Income from nontransport ventures	81	81	81
87.*0* Equity in income of investor controlled companies	81	81	81
88.*1* Intercompany transaction adjustment-credit	81	81	81
88.*2* Dividend income	81	81	81
88.*3* Net unrealized gain or loss on marketable equity securities	81	81	81.
88.*4* Net realized gain or loss on marketable equity securities	81	81	81.
88.*5* Capital gains and losses—operating property	81	81	81.
88.*6* Capital gains and losses—other	81	81	81.
88.*7* Unapplied cash discounts	81	81	81.
88.*9* Other miscellaneous nonoperating credits	81	81	81.
89.*1* Intercompany transaction adjustment—debit	81	81	81.
89.*9* Other miscellaneous nonoperating debits	81	81	81.
INCOME TAXES			
91 Provision for income taxes:			
91.*1* Income taxes before investment tax credits	91	91	91.
91.*2* Investment tax credits utilized	91	91	91.
92 Provisions for deferred income taxes:			
92.*1* Current provisions for deferred taxes	91	91	91.
92.*2* Application of deferred taxes	91	91	91.
92.*3* Adjustment of deferred taxes	91	91	91.
93 Investment tax credits deferred and amortized:			
93.*1* Investment tax credits deferred	91	91	91.
93.*2* Amortization of deferred investment tax credits	91	91	91.
94 Excess profits taxes	91	91	91.
DISCONTINUED OPERATIONS			
95 Discontinued operations:			
95.*1* Income from discontinued operations	96	96	96.

Section 7—Chart of Profit and Loss Accounts—Continued

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
95.2 Loss on disposal of discontinued operations	96	96	96.
EXTRAORDINARY ITEMS			
96 Extraordinary items	97	97	97.
97 Income taxes applicable to extraordinary items	97	97	97.
CHANGES IN ACCOUNTING PRINCIPLES			
98 Cumulative effects of change in accounting principles	98	98	98.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-781, 37 FR 25223, Nov. 29, 1972; 37 FR 28277, Dec. 22, 1972; ER-797, 38 FR 10926, May 3, 1973; ER-841, 39 FR 11995, Apr. 2, 1974; ER-948, 41 FR 12295, Mar. 25, 1976; ER-980, 42 FR 35, Jan. 3, 1977; ER-1013, 42 FR 37515, July 21, 1977; ER-1401, 50 FR 242, Jan. 3, 1985]

Section 8—General

(a) The profit and loss accounts are designed to reflect, through natural groupings, the elements entering into the derivation of income or loss accruing to the proprietary interests during each accounting period.

(b) The prescribed system of accounts provides for the co-ordinate grouping of all revenues and expenses in terms of both major natural objectives and functional activities and for subdivision of both to provide varying degrees of detail for air carriers of differing accounting capacities and/or requirements.

(c) The detailed objective accounts established for each air carrier group, by the dual subdivision of profit and loss elements in terms of both natural objectives and functional activities, are set forth in section 7, Chart of Profit and Loss Accounts.

(d) The prescribed system of accounts provides generally that profit and loss elements shall be grouped in accordance with their inherent characteristics within the following primary classifications:

(1) *Operating revenues.* (i) This primary classification shall include revenues of a character usually and ordinarily derived from the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurrent nature applicable to services performed in prior accounting years. (See section 2-7.)

(ii) Operating revenues shall be subclassified in terms of functional activities as provided in section 9.

(2) *Operating expenses.* (i) This primary classification shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurring nature attributable to services performed in prior accounting years. (See section 2-7.)

(ii) Operating expenses shall be subclassified in terms of functional activities as provided in sections 10 and 11.

(3) *Nonoperating income and expense—net.* This primary classification (8100) shall include income and loss incident to commercial ventures not inherently related to the performance of the common carrier air transport services of the accounting entity; other revenues and expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services; and special recurrent items of a nonperiod nature.

(4) *Income taxes for current period.* This primary classification (9100) shall include provisions for Federal, state, local, and foreign taxes which are based upon the net income of the air

carrier for the current period together with refunds for excess profits credits or carryback of losses and increases or reductions of income taxes of prior years of a magnitude which will not distort net income of the current accounting year. Income taxes applicable to special income credits or debits recorded in profit and loss classification 9700 Extraordinary Items, and other material income tax items not allocable to income of the current accounting year, shall not be included in this classification but in profit and loss classification 9700 Extraordinary Items.

(5) *Discontinued operations.* This primary classification (9600) shall include earnings and losses of discontinued nontransport operations and gains or losses from the disposal of nontransport operations the result of which are customarily accounted for through profit and loss objective accounts 86, 87 and 88.2 (see sec. 2-7(e)).

(6) *Extraordinary items.* This primary classification (9700) shall include material items characterized by their unusual nature and infrequent occurrence (see sec. 2-7(b)).

(7) *Cumulative effect of changes in accounting principles.* This primary classification (9800) shall include the cumulative effect of material changes in accounting principles (see section 2-7(g)).

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-841, 39 FR 11997, Apr. 2, 1974; ER-980, 42 FR 36, Jan. 3, 1977]

Section 9—Functional Classification—Operating Revenues

3900 Transport Revenues.

This classification is prescribed for all air carrier groups and shall include all revenues from the air transportation of traffic of all classes. It shall consist of the following subclassifications:

3100 *Scheduled Services.*

This subclassification shall include revenues from the transportation by air of individual passengers or cargo shipments (as opposed to charter flights) pursuant to published schedules, including extra sections and other flights performed as an integral part of published flight schedules.

3200 *Nonscheduled Services.*

This subclassification shall include revenues from the transportation by air of traffic applicable to the performance of aircraft charters, and other air transportation services not part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the subclassification 3100 Scheduled Services).

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 243, Jan. 3, 1985]

4800 Transport-Related Revenues.

(a) This classification is prescribed for all air carrier groups and shall include all revenues from the United States Government as direct grants or aids for providing air transportation facilities and all revenues from services which grow from and are incidental to the air transportation services performed by the air carrier.

(b) Revenues related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this classification (see section 1-6(b)). Revenues applicable to such services shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.

[ER-841, 39 FR 11997, Apr. 2, 1974]

Section 10—Functional Classification—Operating Expenses of Group I Air Carriers

5100 Flying Operations.

(a) This function shall include expenses incurred directly in the inflight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(b) This function shall not include expenses incurred in repairing, servicing or storing aircraft, expenses incurred on the ground in protecting and controlling the inflight movement of aircraft, or the compensation of

nd personnel and other expenses
rred in scheduling or preparing
raft or aircraft operational person-
for flight assignment. Such ex-
ses shall be included in function
) Maintenance or function 6900
eral Services and Administration.

Maintenance.

) This function shall include all ex-
ses, both direct and indirect, spe-
ally identifiable with the repair
upkeep of property and equip-
t as may be required to meet oper-
g and safety standards; in inspect-
or checking property and equip-
t in accordance with prescribed
rational standards; and in polish-
or cleaning property and equip-
t when such polishing or cleaning
ot an incidental routine in connec-
with the normal productive use of
perty and equipment.
) This function shall include the
of direct labor, materials, and out-
services and maintenances over-
d or other costs specifically associ-
l with maintenance operations re-
dless of the location at which in-
red.
) This function shall not include
s incurred in the construction, im-
vement, or modification of proper-
and equipment even when necessi-
ed to meet new or changed operat-
or safety standards. Such costs
ll be charged to appropriate prop-
y and equipment accounts.
l) Costs incurred by aircraft han-
g personnel in visual inspection,
or check and servicing of aircraft,
le in line service, shall not be in-
ded in this function when per-
med as an incidental routine during
normal productive use of aircraft
shall be included in function 6900
neral Services and Administration.
e) Each Group I air carrier shall
intain the following subfunctions:

0 *Direct Maintenance.*

This subfunction shall include the costs
abor, materials and outside services con-
ned directly in periodic maintenance op-
tions and the maintenance and repair of
perty and equipment, of all types and
sses, regardless of the location at which
urred, exclusive of costs specifically iden-
ed with maintenance property and equip-
nt expenses in balance sheet accounts
1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements which shall be included in subfunction 5300 Maintenance Burden.

b. The cost of direct labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment shall be recorded on running job orders or tickets covering repairs and periodic inspections except servicing. Where a number of like items are maintained on a group basis, it will be necessary to maintain only one job order for each group.

c. When supervisory personnel such as crew chiefs, inspectors and foremen are engaged in direct labor in connection with equipment maintenance, a proportionate part of their salaries and wages shall be charged to the appropriate direct labor accounts. The cost of transporting property to and from shops for repair and maintenance shall be included as a part of the cost of the materials and supplies used in the repair or maintenance of such property and equipment. Transportation charges, customs and duties, etc.; shall be included in the cost of repairs and maintenance operations when made by outside parties.

5300 *Maintenance Burden.*

a. This subfunction shall include all overhead or general expenses which are specifically identified with activities involved in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, including the cost of direct labor, materials and outside services identified with the maintenance and repair of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1604.1 Maintenance Buildings and Improvements. It shall include expenses specifically related to the administration of maintenance stocks and stores, the keeping of pertinent maintenance operations records, and the scheduling, controlling, planning and supervision of maintenance operations.

b. This subfunction shall not include expenses related to financial accounting, purchasing or other overhead activities which are of general applicability to all operating functions. Such expenses shall be included in function 6900 General Services and Administration.

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects in accordance with the provisions of section 2-9(b). Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 36, Jan. 3, 1977; ER-1027, 42 FR 60128, Nov. 25, 1977; ER-1188, 45 FR 48870, July 22, 1980]

6900 General Services and Administration.

This function shall include expenses incurred on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling, or servicing aircraft on the ground; selling transportation; servicing and handling traffic of all classes; promoting the development of traffic; administering operations generally; and all other expenses not otherwise provided for in functions 5100 Flying Operations, 5400 Maintenance and 7000 Depreciation and Amortization.

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 2-20, 5-5 and 6-1696, 1830 and 1890.)

[ER-1401, 50 FR 243, Jan. 3, 1985]

7100 Transport-Related Expenses.

(a) This function shall include all expense items applicable to the generation of transport-related revenues included in section 9, Function 4800.

(b) Such expense related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this function (see section 1-6(b)). Expenses applicable to the generation of such revenues shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.

(c) This function shall also include expenses representing increases in costs incurred in common with the air transport service, to the extent such increases result from the added transport-related services, as well as a pro rata share of the costs incurred by the air carrier in operating facilities which are used jointly with others. As a general rule, this function shall not include those expenses, other than joint facilities costs, which would remain as an essential part of the air transport services if the transport-related services were terminated.

[ER-841, 39 FR 11997, Apr. 2, 1974, as amended by ER-1401, 50 FR 243, Jan. 3, 1985]

Section 11—Functional Classification—Operating Expenses of Group II and Group III Air Carriers

5100 Flying Operations.

(a) This function shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(b) This function shall not include expenses incurred in repairing, servicing or storing aircraft, expenses incurred on the ground in protecting and controlling the in-flight movement of aircraft, or compensation of ground personnel and other expenses incurred in scheduling or preparing aircraft or aircraft operational personnel for flight assignment. Such expenses shall be included in function 5400 Maintenance, or function 6400 Aircraft and Traffic Servicing.

5400 Maintenance.

(a) This function shall include all expenses, both direct and indirect, incurred in the repair and upkeep of property and equipment as may be required to meet operating and safety standards; in inspecting or checking property and equipment in accordance with prescribed operational standards; and in polishing or cleaning property and equipment when such polishing or cleaning is not an incidental routine in connection with the normal productive use of property and equipment.

(b) This function shall include the cost of direct labor, materials, and outside services and maintenance overhead or other costs associated with maintenance operations regardless of the location at which incurred.

(c) This function shall not include costs incurred in the construction, improvement, or modification of property and equipment even when necessitated to meet new or changed operating or safety standards. Such costs shall be charged to appropriate property and equipment accounts.

(d) Costs incurred by aircraft handling personnel in visual inspection, minor check and servicing of aircraft, while in line service, shall not be included in this function when performed as an incidental routine during the normal productive use of aircraft but shall be included in function 6400 Aircraft and Tariff Servicing.

(e) Both Group II air carriers and Group III air carriers shall maintain the following subfunctions:

5200 *Direct Maintenance.*

a. This subfunction shall include the costs of labor, materials and outside services consumed directly in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, regardless of the location at which incurred, exclusive of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements, which shall be included in subfunction 5300 Maintenance Burden.

b. The cost of direct labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment shall be recorded on running job orders or tickets covering repairs and periodic inspections except servicing. Where a number of like items are maintained on a group basis, it will be necessary to maintain only one job order for each group.

c. When supervisory personnel such as crew chiefs, inspectors and foremen are engaged in direct labor in connection with equipment maintenance, a proportionate part of their salaries and wages shall be charged to the appropriate direct labor accounts. The cost of transporting property to and from shops for repair and maintenance shall be included as a part of the cost of the materials and supplies used in the repair or maintenance of such property and equipment. Transportation charges, customs and duties, etc., shall be included in the cost of repairs and maintenance operations when made by outside parties.

5300 *Maintenance Burden.*

a. This subfunction shall include all overhead or general expenses used directly in the activities involved in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, including the cost of direct labor, materials and outside services used in the maintenance and repair of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements. It shall include expenses related to the administration of maintenance stocks and stores, the keeping of pertinent maintenance operation records, and the scheduling, controlling, planning and supervision of maintenance operations.

b. This subfunction shall not include expenses related to financial accounting, purchasing or other overhead activities which are of general applicability to all operating functions. Such expenses shall be included in function 6800 General and Administrative.

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects in accordance with the provisions of section 2-9(b). Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 36, Jan. 3, 1977; ER-1401, 50 FR 244, Jan. 3, 1985]

5500 Passenger Service.

This function shall include all expenses chargeable directly to activities contributing to the comfort, safety and convenience of passengers while in flight and when flights are interrupted. It shall not include expenses incurred in enplaning or deplaning passengers, or in securing and selling passenger transportation and caring for passengers prior to entering a flight status. Such expenses shall be included in functions 6400 Aircraft and Traffic Servicing and 6700 Promotion and Sales, respectively.

6400 Aircraft and Traffic Servicing.

(a) This function shall include the compensation of ground personnel and other expenses incurred on the ground incident to the protection and control of the in-flight movement of aircraft, scheduling and preparing aircraft operational crews for flight assignment, handling and servicing aircraft while in line operation, servicing and handling traffic on the ground, subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation, and in-flight expenses of handling and protecting all nonpassenger traffic including passenger baggage.

(b) This function shall include only those aircraft servicing and cleaning expenses which are incurred as an incidental routine during the normal productive use of aircraft in line operations. It shall not include expenses incurred in the repair and maintenance of property and equipment, or in checking or inspecting property and equipment in accordance with prescribed operational standards when such activities are not an incidental routine during the normal productive use of aircraft. Such expenses shall be included in function 5400 Maintenance.

(c) This function shall not include expenses incurred in securing traffic, arranging aircraft space for traffic sold or in issuing documents confirming traffic sales and establishing the air carrier's responsibilities to provide air transportation. Such expenses shall be included in function 6700 Promotion and Sales. However, for purposes of this system of accounts, expenses attributable to the operation of airport traffic offices, excluding reservation centers, shall be included in this function. Expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and

Sales regardless of the location at which incurred.

(d) Group III air carriers shall further subdivide this function as follows:

6100 *Aircraft Servicing.*

a. This subfunction shall include the compensation of ground personnel and other expenses incurred on the ground incident to the protection and control of the in-flight movement of aircraft; scheduling or preparing aircraft operational crews for flight assignment; landing and parking aircraft; visual inspection, routine checking, servicing and fueling of aircraft; and other expenses incurred on the ground incident to readying for arrival and takeoff of aircraft.

6200 *Traffic Servicing.*

a. This subfunction shall include the compensation of ground personnel and other expenses incurred on the ground incident to handling traffic of all types and classes on the ground subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation. Expenses attributable to the operation of airport traffic offices shall also be included in this subfunction; expenses attributable to reservations centers shall be excluded. It shall include expenses incurred in both enplaning and deplaning traffic as well as expenses incurred in preparation for enplanement and all expenses subsequent to deplanement.

b. This subfunction shall also include costs incurred in handling and protecting all nonpassenger traffic while in flight. It shall not include expenses incurred in contributing to the comfort, safety and convenience of passengers while in flight or when flights are interrupted. Such expenses shall be included in function 5500 Passenger Service.

6300 *Servicing Administration.*

a. This subfunction shall include expenses of a general nature incurred in performing supervisory or administrative activities relating solely and in common to subfunctions 6100 Aircraft Servicing and 6200 Traffic Servicing.

b. This subfunction shall not include supervisory or administrative expenses which can be charged directly to subfunction 6100 Aircraft Servicing or subfunction 6200 Traffic Servicing. Nor shall this subfunction include expenses of a general administrative character and of significant amount regularly contributing to operating functions generally. Such expenses shall be included in function 6800 General and Administrative.

c. The expenses in this subfunction shall be recorded separately for each geographic location at which incurred.

6700 **Promotion and Sales.**

(a) This function shall include expenses incurred in creating public preference for the air carrier and its services; stimulating the development of the air transport market; and promoting the air carrier or developing air transportation generally.

(b) It shall also include the compensation of personnel and other expenses incident to documenting sales; expenses incident to controlling and arranging or confirming aircraft space for traffic sold; expenses incurred in direct sales solicitation and selling of aircraft space; and expenses incurred in developing tariffs and schedules for publication.

(c) This function shall not include expenses incurred in handling traffic subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation which shall be included in functions 5500 Passenger Service and 6400 Aircraft and Traffic Servicing. However, for purposes of this system of accounts, expenses attributable to the operation of airport traffic offices, excluding reservation centers, shall be included in function 6400 Aircraft and Traffic Servicing. Expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and Sales regardless of the location at which incurred.

(d) Group III air carriers shall subdivide this function as follows:

6500 *Reservations and Sales.*

This subfunction shall include expenses incident to direct sales solicitation, documenting sales, controlling and arranging or confirming aircraft space sold, and in developing tariffs and schedules for publication. It shall also include expenses attributable to the operation of city traffic offices. Expenses incurred in stimulating traffic and promoting the air carrier or air transportation generally shall not be included in this subfunction but in subfunction 6600 Advertising and Publicity.

6600 *Advertising and Publicity.*

a. This subfunction shall include expenses incurred in creating public preference for the air carrier and its services; stimulating development of the air transport market; and promoting the air carrier or developing air transportation generally.

b. This subfunction shall not include expenses incurred in direct sales solicitation and selling of aircraft space. Such costs shall be included in subfunction 6500 Reservations and Sales.

6800 General and Administrative.

(a) This function shall include expenses of a general corporate nature and expenses incurred in performing activities which contribute to more than a single operating function such as general financial accounting activities, purchasing activities, representation at law, and other general operational administration, which are not directly applicable to a particular function.

(b) This function shall not include expenses incurred directly in promoting traffic or in promoting relations of the air carrier generally with the public which shall be included in function 6700 Promotion and Sales. Nor shall this function include expenses, regularly applicable in large part to a specific function, which contribute only incidentally, or in small amount, to various other functions. Such expenses when of such size as will not distort the function to which predominantly related, shall be included in the specific function to which regularly related. However, expenses of a general administrative character and of significant amount regularly contributing to operating functions generally shall be included in this function.

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See section 2-20, 5-5 and sections 6-1696, 1830 and 1890).

[ER-1401, 50 FR 244, Jan. 3, 1985]

7100 Transport-Related Expenses.

(a) This function shall include all expense items applicable to the generation of transport-related revenues included in section 9, Function 4800.

(b) Such expense related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this function (see section 1-6(b)). Expenses applicable to the generation of such revenues shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.

(c) This function shall also include expenses representing increases in costs incurred in common with the air transport service, to the extent such increases result from the added transport-related services, as well as a pro rata share of the costs incurred by the air carrier in operating facilities which are used jointly with others. As a general rule, this function shall not include those expenses, other than joint facilities, costs, which would remain as an essential part of the air transport services if the transport-related services were terminated.

[ER-841, 39 FR 11997, Apr. 2, 1974, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]

Section 12—Objective Classification-Operating Revenues and Expenses

00 General Instructions.

(a) Basic objective accounts, applicable to all air carrier groups, are established for recording all revenue and expense elements. These basic accounts are in certain areas subdivided to provide greater detail for indicated air carrier groups.

(b) Each air carrier shall credit the gross revenues accruing from services ordinarily associated with air transportation and transportation-related services to the appropriate account established for each revenue source. Expenses incident to transport and transport-related services shall be charged to the accounts established in this section in accordance with the objectives served by each expenditure. However, direct costs of forwarding traffic as a result of interrupted trips, and refunds of sales, shall be charged to the applicable revenue account.

(c) To the end that the integrity of the prescribed objective accounts shall not be impaired, each air carrier shall: (1) Charge the appropriate account prescribed for each service purchased or expense element incurred expressly for the benefit of the air carrier regardless of whether incurred directly by the air carrier or through an agent or other intermediary, and (2) except as provided in objective account 77, Uncleared Expense Credits, credit or charge, as appropriate, the account prescribed for each expense element which may be involved in distributions of expenses between (i) separate operating entities of the air carrier, (ii) transport-related services and transport services, or transport functions, (iii) balance sheet and profit and loss elements, and (iv) the air carrier and others, when the expenses are incurred initially by or for the benefit of the air carrier. At the option of the air carrier, standard rates applicable to each objective account comprising a particular pool of expenses subject to assignment between two or more activities, may be established for proration purposes, provided the rates established are predicated upon the experience of the air carrier and are reviewed and modified as appropriate at least once each year.

TRANSPORT REVENUES

01 Passenger.

(a) Record here revenue from the transportation of passengers by air, including infants transported at reduced fares, berth charges, surcharges for premium services and other similar charges. Revenue from airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by section 403(b) of the Federal Aviation Act and Part 223 of the Board's Economic Regulations, as well as revenue from travel agents, cargo agents and tour conductors traveling at reduced fares, and revenues from service charges for passengers traveling on a nonrevenue basis shall be recorded in objective account 19 Air Transport—Other.

(b) This account shall be subdivided as follows by all air carrier groups:

01.1 *Passenger—First Class.*

Record here revenue from the air transportation of passengers moving at either standard fares or premium fares, or at reduced fares not predicated upon the use of aircraft space specifically separated from first class, and for whom standard or premium quality services are provided.

01.2 *Passenger—Coach.*

Record here revenue from the air transportation of passengers moving at special fares reduced from the first class or premium fares which are predicated upon both the operation of specifically designated aircraft space and a reduction in the quality of service regularly and ordinarily provided.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 36, Jan. 3, 1977]

05 Mail.

(a) Record here revenue from both the transportation by air of United States mail at service mail rates established by the Civil Aeronautics Board and the transportation by air of mail other than United States mail.

(b) Fines and penalties imposed by the United States Government and foreign governments in connection with the carriage of mail shall not be charged to this account but to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits.

(c) This account shall be subdivided as follows by all air carrier groups:

05.1 *Priority.*

Record here revenue from United States mail bearing postage at rates established specifically for air mail service or mail moving at service transportation rates equivalent to those established for mail bearing the full air mail postage.

05.2 *Nonpriority.*

Record here revenue from United States mail moving at service transportation rates lower than those established for mail bearing postage established specifically for air mail service.

05.3 *Foreign.*

Record here revenue from the transportation by air of mail other than United States mail.

[ER-980, 42 FR 36, Jan. 3, 1977]

06 Property.

(a) Record here revenue from the transportation by air of property including excess passenger baggage.

(b) Revenues resulting from services incidental to the transportation services such as collection of shipper's interest insurance premiums and charges and fees for service such as pick-up and delivery, assembly and distribution, storage and handling, and C.O.D. collection shall not be credited to this account but to profit and loss account 17 Air Cargo Services.

(c) This account shall be subdivided as follows by all air carrier groups:

06.1 *Freight.*

Record here revenue from the transportation by air of property other than passenger baggage.

06.2 *Excess Passenger Baggage.*

Record here revenue from the transportation by air of passener baggage in excess of fixed free allowance.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]

07 Charter.

(a) Record here the revenue from nonscheduled air transport services (except as otherwise required by profit and loss Account 86 Income from Nontransport Ventures) where the party receiving the transportation obtains exclusive use of an aircraft at either published tariff or other contractual rates and the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of, the accounting air carrier. This account shall also include revenues from air transport services other than interairport services, whether scheduled or nonscheduled, where each passenger or shipment receiving transportation is individually documented and does not obtain exclusive use of an aircraft.

(b) This account shall not include revenues or fees received from other air carriers for flight facilities furnished or operated by the accounting air carrier where the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of other air carriers. Such revenues and related expenses shall be included in profit and loss accounts 11, Rents; 13, Interchange Sales; or 18, Other Transport-Related Revenues and Expenses.

(c) This account shall be subdivided as follows by all air carrier groups:

07.1 *Passenger.*

Record here revenue from the transportation of passengers and their personal baggage.

07.2 *Property.*

Record here revenue from the transportation of property.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 37, Jan. 3, 1977; ER-1401, 50 FR 244, Jan. 3, 1985]

TRANSPORT RELATED REVENUES AND EXPENSES

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of section 419 of the Federal Aviation Act under rates established by the Civil Aeronautics Board for the provision of essential air service to small communities.

[ER-1401, 50 FR 244, Jan. 3, 1985]

09 In-Flight Sales.

(a) Record here revenues from and expenses related to transport-related services performed while in flight.

(b) This account shall be subdivided as follows by all air carrier groups:

09.1 Liquor and food—gross revenues.
09.2 Movies and stereo—gross revenues.
09.3 Other—gross revenues.
09.4 Liquor and food—depreciation expense.
09.5 Liquor and food—other expense.
09.6 Movies and stereo—depreciation expense.
09.7 Movies and stereo—other expense.
09.8 Other—depreciation expense.
09.9 Other—expense.

10 Restaurant and Food Service (Ground).

(a) Record here revenues from and expenses related to the operation of restaurants and similar facilities, and from sales of food. (See section 12-51.)

(b) This account shall be subdivided as follows by all air carrier groups.

10.1 Gross revenues.
10.2 Depreciation expense.
10.3 Other expense.

11 Rents.

(a) Record here revenues from and expenses related to property and equipment owned or leased which has been rented or subleased to others exclusive of associated companies. This account shall not include fees from the use by others of air carrier aircraft under aircraft interchange agreements.

(b) This account shall be subdivided as follows by all air carrier groups:

11.1 Gross Revenues.
11.2 Depreciation Expense.
11.3 Other Expenses.

12 Limousine Service.

(a) Record here revenues from and expenses related to the operation of passenger limousine surface transportation services.

(b) This account shall be subdivided as follows by all air carrier groups:

12.1 Gross Revenues.
12.2 Depreciation Expense.
12.3 Other Expenses.

13 Interchange Sales.

(a) Record here the revenues or fees from and the expenses related to services provided associated companies and other than associated companies by the air carrier under aircraft interchange agreements. This account shall be charged and the applicable operating expense objective accounts shall be credited, except as provided in operating expense objective account 77, Uncleared Expense Credits, with the expenses attaching to services provided all companies under aircraft interchange agreements.

(b) This account shall not include revenues or expenses related to air transportation services performed in the name of and for the account of the accounting air carrier. Such revenues shall be included in applicable transport revenue and operating expense objective accounts.

(c) This account shall be subdivided as follows by all air carrier groups:

13.1 Associated companies—gross revenues.
13.2 Outside—gross revenues.
13.3 Associated companies—depreciation expense.
13.4 Associated companies—other expense.
13.5 Outside—depreciation expense.
13.6 Outside—other expense.

14 General Service Sales.

(a) Record here the revenues, commissions or fees from and expenses related to other than air transportation and aircraft interchange services provided to associated and outside companies by the air carrier. This account shall include the contractual fees or other revenues from and expenses related to services provided to associated and other companies in the operation of facilities which are used jointly with associated and other companies as well as revenues from and the costs related to the sale of supplies, parts and repairs sold directly or furnished as a part of services to associated and other companies.

(b) This account shall not include consideration received from sales of property, equipment, materials or supplies when disposed of as a part of a program involving retirement of property and equipment as opposed to routine sales and services to associated and other companies unless such disposition is conducted as a normal part of the incidental sales activity. Such retirement gain or loss shall be included in capital gains and losses accounts. Maintenance parts, materials or supplies sold as a service to others shall be charged to this account at cost without adjustment of related obsolescence or depreciation allowances.

(c) This account shall be subdivided as follows by all air carrier groups:

14.1 Associated companies—gross revenues.
14.2 Outside—gross revenues.
14.3 Associated companies—depreciation expense.
14.4 Associated companies—other expense.
14.5 Outside—depreciation expense.
14.6 Outside—other expense.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 37, Jan. 3, 1977]

15 Mutual Aid.

(a) Record here the receipts and payments under agreements with other air carriers providing for mutual financial assistance in the case of work stoppages. Gross amounts shall be recorded.

(b) This account shall be subdivided as follows by all air carriers:

15.1 Receipts.
15.2 Payments.

16 Substitute (replacement) Service.

(a) Record here revenues from and expenses related to substitute service. This account shall include as revenues all monies received from substitute carriers and as expense all monies paid to substitute carriers.

(b) This account shall be subdivided as follows by all air carrier groups:

16.1 Gross revenue.
16.2 Expense.

17 Air Cargo Services.

(a) Record here fees and other revenues from and expenses related to incidental services performed in connection with cargo shipments such as pickup and delivery fees, shipper's interest insurance charges, storage and handling fees, etc.

(b) This account shall be subdivided as follows by all air carrier groups:

17.1 Gross Revenues.
17.2 Depreciation Expense.
17.3 Other Expenses.

18 Other Transport-Related Revenues and Expenses.

(a) Record here revenues from and expenses related to transport-related services not provided for in profit and loss accounts 10 through 17, inclusive, such as revenues and expenses incident to the operation of flight facilities by the accounting air carrier, except those operated under aircraft interchange agreements, where the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of, other air carriers; and the revenues and expenses incident to vending machines, parcel rooms, storage facilities, etc.

(b) [Reserved]

(c) Revenues from the renting or leasing of property and equipment to others shall not be included in this account but in profit and loss account 11 Rents.

(d) This account shall be subdivided as follows by all air carrier groups:

18.1 Gross Revenues.
18.2 Depreciation Expense.
18.3 Other Expenses.

19 Air Transport—Other.

(a) Record here revenues associated with air transportation conducted by the air carrier, not provided for in profit and loss accounts 01 through 09, inclusive, such as revenue from (1) airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by section 403(b) of the Federal Aviation Act and Part 223 of the Board's Economic Regulations, as well as travel agents, cargo agents and tour conductors traveling at reduced fares, (2) service charges for failure to cancel or for late cancellation of air transportation reservations, and (3) nontransportation service charges collected on both revenue and nonrevenue flights.

(b) Revenues derived from sightseeing, aerial photography, advertising, or other special flights shall not be included in this account but in account 07 Charter.

(c) This account shall be subdivided as follows by all air carrier groups:

19.1 Reservations Cancellation Fees.
19.9 Miscellaneous Operating Revenue.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-820, 38 FR 24352, Sept. 7, 1973; ER-841, 39 FR 11997, Apr. 2, 1974; ER-980, 42 FR 37, Jan. 3, 1977]

TRANSPORT EXPENSES

20 General Instructions.

(a) Each element of expense ordinarily associated with air transportation services shall be charged to the accounts established in this section in accordance with the objectives served by each expenditure. Basic objective accounts, applicable to all air carrier groups, are established for recording all expense elements. These basic accounts are in certain areas subdivided to provide greater detail for indicated air carrier groups.

(b) To the end that the integrity of the prescribed objective accounts shall not be impaired, each air carrier shall: (1) Charge the appropriate account prescribed for each service purchased or expense element incurred expressly for the benefit of the air carrier regardless of whether incurred directly by the air carrier or through an agent or other intermediary, and (2) except as provided in objective account 77 Uncleared Expense Credits, credit or charge, as appropriate, the account prescribed for each expense element which may be involved in distributions of expenses between (i) separate operating entities of the air carrier, (ii) incidental and transport services or transport functions, (iii) balance sheet and profit and loss elements and (iv) the air carrier and others, when the expenses are incurred initially by or for the benefit of the air carrier. At the option of the air carrier, standard rates applicable to each objective account comprising a particular pool of expenses subject to assignment between two or more activities, may be established for proration purposes, provided the rates established are predicated upon the experience of the air carrier and are reviewed and modified as appropriate at least once each year.

21 General Management Personnel.

Record here the compensation, including vacation and sick leave pay, of general officers and supervisors, and immediate assistants regardless of locality at which based, responsible for an activity not provided for in profit and loss accounts 25 through 35, inclusive, or an activity involving two or more such accounts.

23 Pilots and Copilots.

Record here the compensation, including vacation and sick leave pay, of pilots and copilots assigned or held inactive awaiting assignment to flight duty.

24 Other Flight Personnel.

Record here the compensation, including vacation and sick leave pay, of other flight personnel assigned or held inactive awaiting assignment to flight status, not responsible for the in-flight management of aircraft, such as engineers, navigation officers and cabin attendants.

25 Maintenance Labor.

(a) Record here the compensation for time of personnel spent directly on specific property and equipment maintenance projects. (See sections 10 and 11-5200.) Vacation and sick leave pay shall be charged to profit and loss account 28 Trainees, Instructors and Unallocated Shop Labor.

(b) This account shall be subdivided as follows:

GROUP II AND GROUP III AIR CARRIERS

25.1 *Labor—Airframes and Other Flight Equipment.*

Record here the direct labor expended upon airframes, spare parts related to airframes, and other flight equipment (Other than aircraft engines and spare parts related to aircraft engines). Other flight equipment shall include instruments, which encompass all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines which are maintaned separately from airframes and aircraft engines.

25.2 *Labor—Aircraft Engines.*

Record here the direct labor expended upon aircraft engines and spare parts related to aircraft engines.

GROUP I AIR CARRIERS

25.6 *Labor—Flight Equipment.*

Record here the direct labor expended upon flight equipment of all types and classes.

ALL AIR CARRIER GROUPS

25.9 *Labor—Ground Property and Equipment.*

Record here the direct labor expended upon ground property and equipment of all types and classes. Direct labor expended upon general ground properties shall be charged to subfunction 5200 Direct Maintenance; and direct labor expended upon maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]

26 Aircraft and Traffic Handling Personnel.

(a) Record here the compensation, including vacation and sick leave pay, of personnel of all types and classes, including direct supervisory personnel, assigned to ground activities, engaged directly in protecting and controlling aircraft in flight, scheduling and preparing flight crews for flight assignment, parking and servicing aircraft incidental to line operations, and of personnel of all types and classes engaged in servicing and handling traffic of all types and classes on the ground.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

26.1 *General Aircraft and Traffic Handling Personnel.*

Record here compensation of personnel handling or controlling aircraft and generally servicing or handling traffic of all types and classes whose activities are not identifiable with the particular activities provided for in subaccounts 26.2, 26.3, or 26.4, inclusive.

26.2 *Aircraft Control Personnel.*

Record here compensation of personnel whose activities are identifiable with the protection and control of aircraft in flight and in scheduling or preparing flight crews for flight assignment.

26.3 *Passenger Handling Personnel.*

Record here compensation of personnel whose activities are identifiable with the handling of passengers.

26.4 *Cargo Handling Personnel.*

Record here compensation of personnel whose activities are identifiable with the handling of passenger baggage, mail, express, or freight.

28 Trainees, Instructors, and Unallocated Shop Labor.

(a) Record here the compensation, including vacation and sick leave pay, of instructors and personnel in an off-the-job training status; direct maintenance personnel compensation not assigned to specific projects; and vacation or sick leave pay of direct maintenance personnel.

(b) This account shall be subdivided as follows by all air carrier groups:

28.1 *Trainees and Instructors.*

Record here the compensation of instructors and personnel in a training status.

28.2 *Unallocated Shop Labor.*

Record here the pay of direct maintenance personnel which has not been assigned to profit and loss account 25 Maintenance Labor for time spent on specific maintenance projects, and vacation or sick leave pay of direct maintenance personnel.

30 Communications Personnel.

Record here the compensation, including vacation and sick leave pay, of personnel of all types and classes, including direct supervisory personnel, engaged in local, interstation, or groundair communication activities. This account shall include compensation of personnel such as radio operators, telephone operators, switchboard operators, teletype operators, messengers, etc.

31 Recordkeeping and Statistical Personnel.

Record here the compensation, including vacation and sick leave pay, of personnel including supervisory personnel, whose primary duties relate to maintaining records or conducting economic or other analyses required for general management controls, such as accountants, economists, statisticians, maintenance record clerks, stores record clerks, stores receiving and issuing clerks and file clerks. The account shall not include personnel engaged in documentation or other activities constituting an integral part of activities encompassed by other objective accounts.

32 Lawyers and Law Clerks.

Record here the compensation, including vacation and sick leave pay, of air carrier personnel engaged in law research or representing the air carrier in matters of law.

33 Traffic Solicitors.

Record here the compensation, including vacation and sick leave pay, of personnel engaged directly in solicitation of traffic of all types and classes. This account shall not include compensation of traffic office personel engaged in soliciting activities incidental to the documenting of sales and assigning aircraft space which shall be included in profit and loss account 26 Aircraft and Traffic Handling Personnel.

34 Purchasing Personnel.

(a) Record here the compensation, including vacation and sick leave pay, of personnel, including direct supervisory personnel, engaged in purchasing activities.

(b) This account shall include compensation of personnel engaged in maintaining purchasing records but shall not include compensation of personnel responsible for the control of inventories or stores which shall be included in objective account 31 Record Keeping and Statistical Personnel. In cases where the responsibility for maintaining purchasing and stores records are inseparable, the related compensation may be accounted for in accordance with dominant responsibilities.

35 Other Personnel.

Record here the compensation, including vacation and sick leave pay, of personnel whose activities are not identifiable with activities provided for in profit and loss accounts 21 through 34, inclusive.

36 Personnel Expenses.

(a) Record here expenses incurred by officers, executives, directors and other personnel, whether for the benefit of the air carrier or for the private benefit of such persons, which are directly or indirectly borne by the air carrier.

(b) This account shall include allowances in lieu of expenses as well as expenses incurred for travel, lodgings, meals, entertainment of individuals or groups of individuals, and membership fees and dues in professional or social clubs and associations.

(c) Records shall be maintained in a conveniently accessible form which will separately and clearly document each charge to this account in terms of its natural characteristics and contribution to the performance of the air carrier's transport operations. The records shall be maintained in such manner as will identify specifically the persons incurring the cost. Costs for standby hotel or other facilities maintained for the air carrier's personnel generally need not be allocated among the individuals using such facilities; however, sufficiently detailed records are required to identify the use made of such facilities by each individual.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12295, Mar. 25, 1976]

37 Communications Purchased.

Record here expenses, including related taxes, incurred for rental of communication services and for communication services of all types and classes not provided by personnel of the air carrier, such as telegraph, telephone, teletype, private line services, and charges for communication services from organizations operated jointly with associated companies or others.

38 Light, Heat, Power and Water.

Record here charges related to the provision of light, heat, power and water including related taxes.

39 Traffic Commissions.

(a) Record here charges by others, including associated companies, for commissions arising from sales of transportation. Commissions, fees or other charges incurred for general agency services, as opposed to commissions arising from sales of transportation, shall not be included in this account but in profit and loss account 42 General Services Purchased—Associated Companies or profit and loss account 43 General Services Purchased—Outside, as appropriate.

(b) This account shall be subdivided as follows by Group II and Group III air carriers.

39.1 *Commissions—Passenger.*

Record here charges for commissions arising from sales of passenger transportation.

39.2 *Commissions—Property.*

Record here charges for commissions arising from sales of nonpassenger transportation.

40 Legal Fees and Expenses.

Record here expenditures incurred for legal services by counsel retained on a fee basis and related expenses reimbursed or borne directly by the air carrier and other expenses incurred directly by the air carrier for legal supplies not obtainable from the air carrier's general stationery stock. This account shall not be charged with legal fees or expenses incurred in connection with claims occasioned by accidents or other casualties. Such charges shall be accumulated in balance sheet account 1890 Other Assets and cleared to profit and loss account 58 Injuries, Loss and Damage upon settlement of insurance claims. Nor should this account include fees or expenses related to developmental projects. Such expenses shall be included, as appropriate, in profit and loss account 89.9 Other Miscellaneous Nonoperating Debits or balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

[ER-980, 42 FR 37, Jan. 3, 1977]

41 Professional and Technical Fees and Expenses.

Record here fees and expenses, other than legal fees and expenses, incurred for outside professional and technical services which are reimbursed or borne directly by the air carrier. This account shall not include fees or expenses related to developmental projects. Such expenses shall be included, as appropriate, in profit and loss account 89.9 Other Miscellaneous Nonoperating Debits or balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

[ER-980, 42 FR 37, Jan. 3, 1977]

42 General Services Purchased—Associated Companies.

(a) Record here charges for services performed for the air carrier by associated companies which are not identifiable with services provided for in profit and loss accounts 37 through 41, inclusive, or which are not expressly identifiable with other objective expense accounts.

(b) Charges from associated companies for services provided the air carrier under aircraft interchange agreements or other agreements embracing a complete activity or service such as the operation of jointly used ground facilities, shall be included in this account for each operating function to which the services contribute. Charges for providing aircraft capacity including charges for depreciation and interest on the capital related to the flight equipment provided shall be included in function 5100 Flying Operations.

(c) This account shall be subdivided as follows by each air carrier group:

GROUP II AND GROUP III AIR CARRIERS

42.1 *Airframe and Other Flight Equipment Repairs—Associated Companies.*

Record here charges by associated companies for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges by associated companies for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by associated companies for maintenance of airframes and other flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 42.7 Aircraft Interchange Charges—Associated Companies.

42.2 *Aircraft Engine Repairs—Associated Companies.*

Record here charges by associated companies for maintenance or repair of aircraft engines including spare parts related to aircraft engines owned or leased by the air carrier. Charges by associated companies for maintenance of aircraft engines provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 42.7 Aircraft Interchange Charges—Associated Companies.

GROUP I AIR CARRIERS

42.6 *Flight Equipment Repairs—Associated Companies.*

Record here charges by associated companies for maintenance or repair of flight equipment of all types and classes owned or leased by the air carrier. Charges by associated companies for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 42.7 Aircraft Interchange Charges—Associated Companies.

ALL AIR CARRIER GROUPS

42.7 *Aircraft Interchange Charges Associated Companies.*

Record here charges by associated companies for providing aircraft capacity or services related to the direct operation or maintenance of flight equipment under aircraft interchange agreements.

42.8 *General Interchange Service Charges—Associated Companies.*

Record here charges by associated companies for services provided the air carrier under aircraft interchange agreements, other than charges related to the direct operation or maintenance of flight equipment, including all charges for maintenance and repair of ground properties, as well as fees or charges for traffic solicitation and sales, or supervision and administration covered by the aircraft interchange agreements. Charges for depreciation or interest on capital related to flight equipment provided under interchange agreements shall not be included in this subaccount but in subaccount 42.7 Aircraft Interchange Charges—Associated Companies.

42.9 *Other Services—Associated Companies.*

a. Record here charges for services performed by associated companies not provided for elsewhere.

b. This subaccount shall include only those charges for services, not provided for in profit and loss accounts 37 to 41, inclusive, and subaccounts 42.1 to 42.8, inclusive embracing a complete activity or service provided by associated companies, such as the operation of traffic offices or other facilities used jointly with the air carrier, which do not represent reimbursement of specific expense elements incurred expressly for the benefit of the air carrier. Reimbursement of expenses incurred expressly for the benefit of the air carrier shall be entered in appropriate personnel compensation or other objective expense accounts. The cost of services received in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance; and services received in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]

43 General Services Purchased—Outside.

(a) Record here charges for services performed for the air carrier by other than associated companies which are not identifiable with services provided for in profit and loss accounts 37 through 41, inclusive, or which are not expressly identified with other objective expense accounts.

(b) Charges from others for services provided the air carrier under aircraft interchange agreements or other agreements embracing a complete activity or service, such as the operating of jointly used ground facilities, shall be included in this account for each operating function to which the services contribute. Charges for providing aircraft capacity, including charges for depreciation and interest on the capital related to the flight equipment provided, shall be included in function 5100 Flying Operations.

(c) This account shall be subdivided by each air carrier group, as follows:

GROUP II AND GROUP III AIR CARRIERS

43.1 *Airframe and Other Flight Equipment Repairs. Outside.*

Record here charges for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by others for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges—Outside.

43.2 *Aircraft Engine Repairs—Outside.*

Record here charges for maintenance or repair of aircraft engines, including spare parts related to aircraft engines owned or leased by the air carrier. Charges by others for maintenance of aircraft engines provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges—Outside.

GROUP I AIR CARRIERS

43.6 *Flight Equipment Repairs—Outside.*

Record here charges for maintenance or repair or flight equipment of all types and classes owned or leased by the air carrier. Charges by others for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges—Outside.

ALL AIR CARRIER GROUPS

43.7 *Aircraft Interchange Charges—Outside.*

Record here charges by other than associated companies for providing aircraft capacity or services related to the direct operation or maintenance of flight equipment under aircraft interchange agreements.

43.8 *General Interchange Service Charges—Outside.*

Record here charges by others, except associated companies, for services provided the air carrier under aircraft interchange agreements, other than charges related to the direct operation or maintenance of flight equipment, including all charges for maintenance and repair of ground properties, as well as fees or charges for traffic solicitation and sales, or supervision and administration covered by the aircraft interchange agreements. Charges for depreciation or interest on capital related to flight equipment provided under interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges—Outside.

43.9 *Other Services—Outside.*

Record here charges for maintenance and repair of ground property and equipment of all types and classes and other charges for services performed by others not provided for elsewhere. This subaccount shall include only those charges for services not provided for elsewhere in profit and loss accounts 37 to 43 embracing a complete activity or service provided by other than associated companies such as the operation of traffic offices or other facilities used jointly with the air carrier which do not represent reimbursement of specific expense elements incurred expressly for the benefit of the air carrier. Reimbursement of expenses incurred expressly for the benefit of the air carrier shall be entered in appropriate personnel compensation or other objective expense accounts. The cost of services received in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance; and services received in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]

44 **Landing Fees.**

Record here the charges and fees incurred for landing of aircraft while in line operation.

45 **Aircraft Fuels and Oils.**

(a) Record here the cost of fuels and oils issued from stocks of the air carrier, or delivery directly by others, to aircraft for use in flight operations. Adjustments of inventories of aircraft fuel and oil shall also be entered in this account. The cost of fuels and oils used in repairs and maintenance services and nonrefundable fuel and oil taxes shall not be included in this account but in profit and loss accounts 49 Shop and Servicing Supplies and 69 Taxes—Other than Payroll, respectively.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

45.1 *Aircraft Fuels.*

Record here the cost of fuels used in flight operations.

45.2 *Aircraft Oils.*

Record here the cost of oils used in flight operations.

46 **Maintenance Materials.**

(a) Record here the cost of materials and supplies consumed directly in specific property and equipment maintenance projects.

(b) This account shall be subdivided as follows:

GROUP II AND GROUP III AIR CARRIERS

46.1 *Materials—Airframes and Other Flight Equipment.*

Record here the cost of materials and supplies consumed directly in maintenance of airframes and spare parts related to airframes. Other flight equipment (including instruments), excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all guages, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines.

46.2 *Materials—Aircraft Engines.*

Record here the cost of materials and supplies consumed directly in maintenance of aircraft engines and spare parts related to aircraft engines.

GROUP I AIR CARRIERS

46.6 *Materials—Flight Equipment.*

Record here the cost of materials and supplies consumed directly in the maintenance of flight equipment of all types and classes.

ALL AIR CARRIER GROUPS

46.9 *Materials—Ground Property and Equipment.*

Record here the cost of materials and supplies consumed directly in the maintenance of ground property and equipment of all types and classes. The cost of materials and supplies consumed in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance and materials and supplies consumed in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 245, Jan. 3, 1985]

47 Rentals.

Record here rentals, fee, or charges incurred in the use of property and equipment provided by others. When a lease arrangement provides that the amounts paid include charges for maintenance, insurance, or taxes, the amounts related thereto shall not be recorded in this account but in the appropriate expense account to which related.

49 Shop and Servicing Supplies.

Record here the cost of supplies and expendable small tools and equipment used in maintaining, servicing and cleaning property or equipment the cost of which cannot be directly assigned to a specific job or type of work.

50 Stationery, Printing and Office Supplies.

Record here the cost of stationery and forms used by the air carrier including the cost of engineering and shipping supplies.

51 Passenger Food Expense.

(a) Record here the cost of food and refreshments served passengers except food costs arising from interrupted trips.

(b) If the air carrier prepares its own food, the initial cost and expenses incurred in the preparation thereof shall be accumulated in a clearly identified clearing account through which the cost of food shall be cleared to this account, to profit and loss account 36 Personnel Expenses, and to profit and loss account 10 Hotel, Restaurant and Food Service on bases which appropriately allocate the cost of food served passengers, the cost of food provided employees without charge and the cost of food sold.

53 Other Supplies.

Record here the cost of supplies consumed and not provided for otherwise.

54 Inventory Adjustments.

Record here adjustments for overage, shortage or shrinkage of inventories carried in balance sheet account 1300 Spare Parts and Supplies. Adjustment of aircraft fuel and oil inventories due to retroactive price increases and decreases shall not be included in this account but in profit and loss account 45 Aircraft Fuels and Oils. Gains or losses from retirements of materials and supplies shall not be recorded in this account but in profit and loss account 88.5 Capital Gains and Losses—Operating Property.

[ER-980, 42 FR 37, Jan. 3, 1977]

55 Insurance—General.

Record here the cost of public liability and property damage insurance and all other general insurance except insurance covering liability for injuries, loss, and damage to passengers and cargo, and insurance carried for the protection or welfare of employees.

[ER-948, 41 FR 12295, Mar. 25, 1976]

56 Insurance—Traffic Liability.

Record here the cost of purchased insurance covering liability for injuries, loss and damage to passengers and cargo.

[ER-980, 42 FR 37, Jan. 3, 1977]

57 Employee Benefits and Pensions.

(a) Record here all costs for the benefit or protection of employees including all pension expenses whether for payments to or on behalf of retired employees or for accruals or annuity payments to provide for pensions; and all expenses for accident, sickness, hospital, and death benefits to employees or the cost of insurance to provide these benefits. Include, also, expenses incurred in medical, educational, or recreational activities for the benefit of employees. Do not include vacation and sick leave pay, or salaries of doctors, nurses, trainees, or instructors, which shall be recorded in the regular salary accounts.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 37, Jan. 3, 1977; ER-1188, 45 FR 48871, July 22, 1980]

58 Injuries, Loss and Damage.

Record here the remainder of gains, losses or costs resulting from accidents, casualties or mishandlings, after offsetting insurance recoveries, as accumulated until finally determined, in balance sheet account 1890 Other Assets. This account shall not include gains or losses from retirement of property and equipment resulting from casualties. Such gains or losses shall be recorded in appropriate capital gains or losses accounts.

[ER-980, 42 FR 37, Jan. 3, 1977]

59 Schedules and Timetables.

Record here the production and distribution cost, excluding compensation of air carrier personnel, of all operating schedules, timetables, circulars and related quick reference charts.

[ER-1401, 50 FR 245, Jan. 3, 1985]

60 Advertising.

Record here the cost, excluding compensation of air carrier personnel, of all space, direct mail, spot and other advertising for the purpose of increasing air travel, disseminating air travel information and publicizing services offered by the air carrier.

61 Foreign Exchange Gains and Losses.

Record here gains or losses from transactions involving currency translations resulting from normal, routine, current fluctuations in rates of foreign exchange in accordance with provisions of section 2-3. Gains or losses of a nonroutine abnormal character and gains or losses which arise from long-term debt principal and interest transactions shall not be entered in this account but in a profit and loss Account 85, Foreign Exchange Gains and Losses.

[ER-1013, 42 FR 37515, July 21, 1977]

62 Other Promotional and Publicity Expenses.

Record here the costs, excluding compensation of air carrier personnel, of producing and distributing publicity releases and other expenses, not chargeable to profit and loss accounts 59 and 60, incurred for the purpose of publicizing or improving the public relations of the air carrier generally.

63 Interrupted Trips Expense.

Record here expenses allowed or paid for the care and serving of passengers because of unscheduled interruptions in passenger journeys. Transportation refunds and the cost of forwarding traffic by surface common carrier or otherwise as a result of such interruptions shall not be charged to this account but to the appropriate operating revenue account.

64 Memberships.

Record here the cost of membership dues in trade associations, chambers of commerce, or other business associations and organizations together with special assessments related thereto.

65 Corporate and Fiscal Expenses.

Record here corporate and fiscal fees and expenses of the air carrier and all expenses in connection with exchange and transfer of capital stock excluding expenses in connection with original issuance of capital stock.

66 Uncollectible Accounts.

Record here losses from uncollectible accounts and allowance provisions and adjustments thereto, for such losses. When allowances for uncollectible accounts are established, losses as realized shall be charged against such allowances and shall not be charged to this account.

[ER-980, 42 FR 37, Jan. 3, 1977]

67 Clearance, Customs and Duties.

Record here clearance, customs, duties and brokerage fees and charges applicable to clearing aircraft and traffic.

68 Taxes—Payroll.

Record here all taxes levied against the air carrier based upon or directly relating to compensation of personnel.

69 Taxes—Other Than Payroll.

(a) Record here all taxes levied against the air carrier not otherwise provided for including nonrefundable aircraft fuel and oil taxes. Interest and penalties on delinquent taxes shall not be charged to this account but to profit and loss accounts 82 Other Interest and 89.9 Other Miscellaneous Nonoperating Debits, respectively.

(b) Entries to this account shall clearly reveal each kind of tax and the governmental agency to which paid or payable.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 37, Jan. 3, 1977]

71 Other Expenses.

Record here all expenses ordinarily associated with air transportation and its incidental services not provided for otherwise.

72 Aircraft Overhauls.

(a) Record here airframe and aircraft engine overhauls of the current period which are transferred to balance sheet subaccounts 1601.2 Unamortized Airframe Overhauls or 1602.2 Unamortized Aircraft Engine Overhauls. This account shall also include the amount of deferred overhauls costs being amortized for the current period. For carriers which elect to continue accruing for aircraft overhauls for aircraft types acquired before January 1, 1976, as well as for other aircraft of the same type acquired after January 1, 1976, the related provisions and charges shall be recorded in the appropriate subaccounts of this account.

(b) This account shall be subdivided as follows by all carrier groups:

72.1 *Airworthiness Allowance Provisions—Airframes.*

Record here current provisions for effecting an equitable distribution of airframe overhaul costs between different accounting periods. Record here also credits for airframe overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.3 *Airframe Overhauls Deferred.*

Record here airframe overhauls of the current period transferred to subaccount 1601.2, Unamortized Airframe Overhauls, and the amount of deferred airframe overhaul costs amortized for the current period.

72.6 *Airworthiness Allowance Provisions—Aircraft Engines.*

Record here current provisions for effecting an equitable distribution of aircraft engine overhauls costs between different accounting periods. Record here also credits for aircraft engine overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.8 *Aircraft Engine Overhauls Deferred.*

Record here airframe overhauls of the current period transferred to subaccount 1602.2, Unamortized Aircraft Engine Overhauls, and the amount of deferred aircraft engine overhaul costs amortized for the current period.

[ER-948, 41 FR 12295, Mar. 25, 1976, as amended by ER-1401, 50 FR 245, Jan. 3, 1985]

73 Provisions for Obsolescence and Deterioration—Expendable Parts.

(a) Where allowances for loss in value of flight equipment expendable parts are established, provisions for accruals to such allowances shall be charged to this account and credited to balance sheet account 1311 Allowance for Obsolescence in accordance with the provisions of that account.

(b) This account shall be subdivided as follows by all air carrier groups:

73.1 *Current provisions.* Record here provisions during the current period for losses in value of expendable parts.

73.2 *Inventory decline credits.* Record here credits applicable to the current period for any adjustments for excess inventory allowance levels determined pursuant to section 6-1311.

[ER-980, 42 FR 37, Jan. 3, 1977]

74 Amortization.

(a) Record here amortization of deferred changes attaching to the air transportation services conducted by the air carrier which are not prepayments of recurrent expenses ordinarily requiring expenditures of working capital within one year.

(b) This account shall be subdivided as follows by all air carrier groups:

74.1 *Developmental and Preoperating Expenses.*

Record here amortization of the cost of projects carried in balance sheet account 1830 Unamortized and Preoperating Costs as approved or directed by the Civil Aeronautics Board.

74.2 *Other Intangibles.*

Record here amortization of the cost of intangibles not provided for otherwise as approved or directed by the Civil Aeronautics Board.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 38, Jan. 3, 1977]

75 Depreciation.

(a) Record here provisions for depreciation of property and equipment carried in balance sheet accounts 1601 through 1640, inclusive.

(b) This account shall be subdivided as follows:

ALL AIR CARRIER GROUPS

75.1 *Depreciation—Airframes.*

Record here provisions for depreciation of property and equipment carried in balance subaccount 1601.1 Airframes.

75.2 *Depreciation—Aircraft Engines.*

Record here provisions for depreciation of property and equipment carried in balance sheet subaccount 1602.1 Aircraft Engines.

GROUP II AND GROUP III AIR CARRIERS

75.3 *Depreciation—Airframe Parts.*

Record here provisions for depreciation of spare airframe instruments and parts carried in balance sheet subaccount 1608.1 Airframe Parts and Assemblies.

75.4 *Depreciation—Aircraft Engine Parts.*

Record here provisions for depreciation of spare aircraft engine instruments and parts carried in balance sheet subaccount 1608.5 Aircraft Engine Parts and Assemblies.

ALL AIR CARRIER GROUPS

75.5 *Depreciation—Other Flight Equipment.*

Record here provisions for depreciation of property and equipment carried in balance sheet account 1607 Improvements to Leased Flight Equipment (exclusive of capitalized overhauls accounted for on a deferral and amortization basis) and balance sheet subaccount 1608.9 Other Parts and Assemblies. Group I air carriers shall also include in this subaccount provisions for depreciation of property carried in balance sheet account 1608 Flight Equipment Rotable Parts and Assemblies.

75.6 *Depreciation—Flight Equipment.*

This classification is established only for purposes of control by the Civil Aeronautics Board and shall include all charges to operating expenses for depreciation of flight equipment of all types and classes.

75.8 *Depreciation—Maintenance Equipment and Hangars.*

Record here provisions for depreciation of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements.

75.9 *Depreciation—General Ground Property.*

Record here provisions for depreciation of property and equipment included in balance of property and equipment included in balance sheet accounts 1630 through 1640, exclusive of provision for depreciation of maintenance property and equipment included in account 75.8.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-948, 41 FR 12296, Mar. 25, 1976; ER-980, 42 FR 38, Jan. 3, 1977]

76 Amortization Expense—Capital Leases.

(a) Record here amortization charges applicable to assets recorded under capital leases in Account 1695 — Leased Property under Capital Leases.

(b) This account shall be subdivided as follows by all air carrier groups:

76.1 *Amortization—Capitalized Flight Equipment.*

Record here amortization charges applicable to flight equipment acquired under capital leases.

76.2 *Amortization—Capitalized Other Property and Equipment.*

Record here the amortization charges applicable to property and equipment, other than flight equipment, acquired under capital leases.

[ER-1401, 50 FR 245, Jan. 3, 1985]

77 Uncleared Expense Credits.

(a) Record here credits to operating expenses, which have not been cleared to the objective accounts to which applicable.

(b) Each air carrier shall credit, or charge as appropriate, the objective account prescribed for each expense element which may be involved in distribution of expenses between separate reporting entities or nontransport divisions of the air carrier. At the option of the air carrier, either the individual applicable objective accounts or this account may be credited with amounts capitalized, charged against incidental services, or otherwise assigned to other than separate operating entities of the air carrier provided the aggregate credits to this account in each function do not, for any accounting year, distort the individual objective accounts of the function to which related and all expense credits applicable to complete individual transactions are consistently credited either to this account or the individual objective accounts to which related. Each air carrier using this account shall establish such standard practices as may be prescribed by the Civil Aeronautics Board or, in the absence of such action by the Civil Aeronautics Board, such standard practices as will prevent credits to this account from significantly distorting the individual objective accounts of each function to which related.

(c) This account shall not be credited with amounts applicable to objective accounts of the Flying Operations, Depreciation, and Direct Maintenance functions. Credits applicable to such functions shall be carried to the individual objective accounts to which applicable.

(d) This account shall be subdivided as follows by all air carrier groups:

77.8 *Uncleared Interchange Expense Credits.*

Record here credits to operating expenses, from operations performed for others under aircraft interchange agreements, which have not been cleared to the objective accounts to which applicable.

77.9 *Other Uncleared Expense Credits.*

Record here credits to operating expenses, from other than operations under aircraft interchange agreements, which have not been cleared to the objective accounts to which applicable.

78 Direct Maintenance—Flight Equipment.

This classification is established for purposes of control by the Civil Aeronautics Board and shall include all charges to operating expenses for maintenance of flight equipment of all types and classes.

79 Applied Burden Debit/Credit.

(a) This classification is established only for purposes of control by the Civil Aeronautics Board and reporting on Form 41 by air carriers, and shall reflect all maintenance burden applied in accordance with the provisions of section 24, schedule P-5 of this system of accounts and reports.

(b) This classification shall be subdivided as follows by all air carrier groups:

79.6 Applied Burden—Flight Equipment.
79.8 Applied Burden—General Ground Property.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-979, 38 FR 10926, May 3, 1973]

Section 14—Objective Classification—Nonoperating Income and Expense

80 Interest Income.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER-1401, 50 FR 245, Jan. 3, 1985]

81 Interest on Long-term Debt and Capital Leases.

(a) Record here interest expense applicable to long-term debt and capitalized leases.

(b) This account shall be subdivided as follows by all air carrier groups:

81.1 *Interest expense—long-term debt.*

Record here interest on all classes of long-term debt. This includes interest expense applicable to all portions of long-term debt which are classified as either current (Account 2000) or long-term (Account 2210) for balance sheet classification purposes.

81.2 *Interest expense—capital leases.*

Record here for all capitalized leases, that portion of each lease payment which represents interest expense.

[ER-1013, 42 FR 37516, July 21, 1977]

82 Other Interest.

(a) This account shall be subdivided as follows by all air carrier groups:

82.1 *Interest Expense—Short-Term Debt.*

Record here interest on all classes of short-term debt.

83.1 *Imputed Interest Capitalized—Credit.*

Record here credits related to imputed interest capitalized pursuant to section 2-10 and recorded in assets accounts.

83.2 *Imputed Interest Deferred—Debit.*

Record here debits related to imputed interest deferred pursuant to section 2-10 in balance sheet account 2390 Other Deferred Credits.

83.3 *Imputed Interest Deferred—Credit.*

Record here periodic credits pursuant to section 2-10 for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 *Interest Capitalized—Credit.*

Record here interest which is capitalized pursuant to section 2-10 and recorded in asset accounts.

84.1 *Amortization of discount and expense on debt.*

Record here for all classes of debt the amortizations of discount and expense on short-term and long-term obligations.

84.2 *Amortization of premium on debt.*

Record here for all classes of debt the amortizations of premium on short-term and long-term obligations.

[ER-1401, 50 FR 245, Jan. 3, 1985]

83 Capitalized Interest.

Included under account 82 Other Interest.

[ER-1401, 50 FR 245, Jan. 3, 1985]

84 Amortization of Debt Discount, Premium and Expense.

Included under account 82 Other Interest.

[ER-1401, 50 FR 245, Jan. 3, 1985]

85 Foreign exchange gains and losses.

Record here gains and losses from transactions involving currency translations resulting from nonroutine abnormal changes in rates of foreign exchange and gains or losses which arise from translations of long-term debt principal and interest transactions in accordance with provisions of section 2-3.

[ER-980, 42 FR 38, Jan. 3, 1977]

86 Income from Nontransport Ventures.

Included under account 89 Other Non-Operating Income and Expense—Net.

[ER-980, 42 FR 38, Jan. 3, 1977]

87 Equity in Income of Investor Controlled Companies.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER-1401, 50 FR 245, Jan. 3, 1985]

89 Other Nonoperating Income and Expense—Net.

(a) Record here all debits and credits of a nonoperating character which are not otherwise provided for in this section.

(b) This account shall be subdivided as follows by all air carrier groups:

80.0 *Interest Income.*

(a) Record here interest income from all sources. This account shall include as an increase or reduction of interest received the proportionate amortization of any discount or premium on the purchase price of securities of others held by the air carrier.

(b) This account shall not include interest on securities issued or assumed by the air carrier and subsequently reacquired.

86.0 *Income from Nontransport Ventures.*

(a) Record here the gross revenues and expenses applicable to operations not reasonably considered as incidental to the commercial air transport services of the accounting entity; rents from nonoperating properties used by others; income or loss from nontransport divisions; and other income or loss from activities of the air carrier which are extraneous to the air transport and incidental services of the accounting entity.

(b) This account shall include revenues and expenses applicable to nonscheduled transport services performed for the defense establishment when separate reports for such services are required in accordance with section 21 "Introduction to System of Reports." Where the foregoing transport services are not required to be separately reported, gross revenues from such services shall be included in profit and loss account 07 Charter, or other appropriate revenue account, and gross expenses shall be included in the appropriate operating expense functions.

87.0 *Equity in Income of Investor Controlled Companies.*

Record here the equity in the current earnings or losses of investor controlled companies. Dividends declared on the stock of such companies shall not be included in this account as income but shall be entered in balance sheet subaccount 1510.1 Investments in Investor Controlled Companies as a return on investment.

88.1 *Intercompany transaction adjustment—credit.*

Record here all intercompany credits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled as provided under section 2-18.

88.2 *Dividend income.*

Record here income from dividends declared on stocks of other than investor controlled companies. Dividends declared on stock of investor controlled companies shall not be included in this account but shall be entered in balance sheet subaccount 1510.1 Investments in Investor Controlled Companies.

88.3 *Net unrealized gain or loss on marketable equity securities.*

Record here the net unrealized gain or loss on the valuation of marketable equity securities pursuant to the provisions of section 2-12.

88.4 *Net realized gain or loss on marketable equity securities.*

Record here the net realized gain or loss on the valuation of marketable equity securities pursuant to the provisions of section 2-12.

88.5 *Capital gains and losses—operating property.*

Record here gains or losses on retirements of operating property and equipment, flight equipment expendable parts, or miscellaneous materials and supplies sold or otherwise retired in connection with a general retirement program as opposed to incidental sales performed as a service to others.

88.6 *Capital gains and losses—other.*

Record here gains or losses not required to be reported in accounts 88.3, 88.4 and 88.5 such as gains or losses on retirement of nonoperating property and equipment, investments in other than marketable equity securities, and the transfer of assets in a troubled debt restructing.

88.7 *Unapplied cash discounts.*

Record here cash discounts on routine purchases of materials, repair parts or supplies. Cash discounts on classes of assets included in property and equipment accounts shall not be recorded in this account but shall be applied as a reduction of the cost of such accounts.

88.9 *Other miscellaneous nonoperating credits.*

Record here all credits of a nonoperating character not provided for otherwise, such as royalties from patents, gains from reacquisition and retirement or resale of debt securities issued by the air carrier, and gains resulting from troubled debt restructurings.

89.1 *Intercompany transaction adjustment—debit.*

Record here all intercompany debits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled as provided under section 2-18.

89.9 *Other Miscellaneous Nonoperating Debits.*

Record here all debits of a nonoperating character not provided for otherwise, such as the following:

(a) Fines or penalties imposes by governmental authorities;

(b) Costs associated with employment discrimination that include the following:

(1) Fines or penalties paid by the carrier as a result of a judicial or administrative decree; or the amount paid to the complainant in settling or securing a consent decree;

(2) Back pay awards as a result of a judicial or administrative decree or a compromise settlement regardless of admission of guilt;

(3) Attorneys' fees or court costs awarded to the complainant by a judicial or administrative decree or as a result of a compromise settlement regardless of admission of guilt;

(4) The fees of outside legal counsel or of experts retained in the unsuccessful defense of a discrimination suit or in securing a compromise settlement or consent decree, unless the amounts attributable to the discrimination are not reasonably identifiable; or

(5) Any other expenses, such as employee salaries, resulting from employment practices that were found to be discriminatory or that were the subject of a compromise settlement or consent decree where the amounts attributable to discrimination are reasonably identifiable.

(c) Amortization expense attributable to capital leases recorded in balance sheet Account 1795, Leased Property under Capital Leases;

(d) Costs related to property held for future use;

(e) Donations for charitable, social or community welfare purposes;

(f) Losses on reacquired and retired or resold debt securities of the air carrier;

(g) Losses resulting from troubled debt restructurings;

(h) Losses on uncollectible nonoperating receivables; or

(i) Accruals to allowance for uncollectible nonoperating receivables.

(Secs. 204, 404, 407, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766, 788, (49 U.S.C. 1324, 1374, 1377, 1482))

[ER-980, 42 FR 38, Jan. 3, 1977, as amended by ER-1013, 42 FR 37516, July 21, 1977; ER-1027, 42 FR 60128, Nov. 25, 1977; ER-1076, 43 FR 46296, Oct. 6, 1978; ER-1401, 50 FR 245, Jan. 3, 1985]

Section 15—Objective Classification—Income Taxes for Current Period

91 Provision for Income Taxes.

(a) Record here quarterly provisions for accruals of Federal, State, local, and foreign taxes based upon net income, computed at the normal tax and surtax rates in effect during the current accounting year. In general, this account shall reflect provisions within each period for currently accruing tax liabilities as actually or constructively computed on tax returns, and any subsequent adjustments. This account shall include credits for refund claims arising from the carryback of losses in the year in which the loss occurs, credits for the carry-forward of losses in the year to which the loss is carried, and investment tax credits in the year in which each credit is utilized to reduce the liability for income taxes. (See section 2-6.) Income taxes shall be apportioned between members of a consolidated tax group in accordance with the provisions of section 2-18.

(b) This account shall be subdivided as follows by all carrier groups:

91.1 *Income Taxes Before Investment Tax Credits.*

Record here accruals of income taxes based upon taxable income of the period.

91.2 *Investment Tax Credits Utilized.*

Record here investment tax credits utilized to reduced the accrued liability for income taxes.

92 Provisions for Deferred Income Taxes.

(a) Record here income tax debits and credits deferred in accordance with the provisions of balance sheet account 2340 Deferred Income Taxes for all material timing differences.

(b) This account shall be subdivided as follows by all air carrier groups:

92.1 *Current Provisions for Deferred Taxes.*
92.2 *Application of Taxes Deferred.*
92.3 *Adjustments of Deferred Taxes.*

[ER-948, 41 FR 12296, Mar. 25, 1976]

93 Investment Tax Credits Deferred and Amortized.

(a) Record here investment tax credits of the current period which are transferred to balance sheet account 2345 Deferred Investment Tax Credits in accordance with the provisions of balance sheet account 2130 Accrued Taxes. This account shall also include amounts for previously deferred investment tax credits amortized during the current period.

(b) This account shall be subdivided as follows by all carrier groups:

93.1 *Investment Tax Credits Deferred.*
93.2 *Amortization of Deferred Investment Tax Credits.*

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 39, Jan. 3, 1977]

Section 16—Objective Classification-Discontinued Operations

95 Discontinued Operations.

(a) Record here the earnings (losses) of discontinued nontransport operations. For the purposes of this system of accounts and reports discontinued operations shall refer to the disposal of investor controlled companies and nontransport ventures whether sold, abandoned, spun off, or otherwise disposed of. This account shall not include earnings or losses from discontinued transport or transport-related operations.

(b) This account shall be subdivided as follows by all air carrier groups:

95.1 *Income from Discontinued Operations.*

Record here the results of operations of the discontinued operations.

95.2 *Loss of Disposal of Discontinued Operations.*

Record here the gain or loss on the disposal of an operation. If loss is anticipated it should be provided for at the measurement date. If gain is anticipated it should be recognized when realized.

[ER-948, 41 FR 12296, Mar. 25, 1976]

Section 17—Objective Classification-Extraordinary Items

96 Extraordinary Items.

Record here material items characterized by their unusual nature and infrequent occurrence as provided in section 2-7(b). Events or transactions which are material and either unusual or nonrecurring, but not both, shall not be recorded in this account but should be disclosed on CAB Form 41 Schedule P-2 and identified both as to their nature and financial effects.

[ER-980, 42 FR 39, Jan. 3, 1977]

97 Income Taxes Applicable to Extraordinary Items.

Record here income taxes allocable to items of income included in profit and loss account 96 Extraordinary Items and income tax assessments that do not constitute ordinary adjustments of a recurrent nature. Records supporting entries to this account shall be maintained with sufficient particularity to identify the nature and gross amount of each extraordinary credit and each extraordinary debit.

[ER-948, 41 FR 12296, Mar. 25, 1976]

Section 18—Objective Classification-Cumulative Effect of Changes in Accounting Principles

98 Cumulative Effect of Changes in Accounting Principles.

Record here the difference between the amount of retained earnings at the beginning of the period of a change in accounting principle and the amount of retained earnings that would have been reported at that date if the new accounting principle had been applied retroactively for all periods which would have been affected and by recognizing only the direct effects of a change and the related income tax effect.

[ER-948, 41 FR 12296, Mar. 25, 1976]

OPERATING STATISTICS CLASSIFICATIONS

Section 19—Uniform Classification of Operating Statistics

Sec. 19-1 Chart of Operating Statistical Elements

Air transport traffic and capacity elements	Service classes
AIRPORT-TO-AIRPORT TRAFFIC AND CAPACITY	
501 Interairport distance	Z.
110 Revenue passengers enplaned	A, C, E, G, L, N, P, R.
111 First class	A, E.
112 Coach	C, E.
210 Revenue cargo tons enplaned	A, C, E, G, L, N, P, R.
213 U.S. mail—priority	A, C, E, G, L, N, P, R.
214 U.S. mail—nonpriority	A, C, E, G, L, N, P, R.
215 Foreign mail	A, C, E, G, L, N, P, R.
217 Freight	A, C, E, G, L, N, P, R.
130 Revenue passengers transported	A, C, E, G, L, N, P, R.
131 First class	A, E.
132 Coach	C, E.
150 Nonrevenue passengers transported	A, C, E, G, L, N, P, R.
230 Revenue tons transported	A, C, E, G, L, N, P, R.
231 Passenger	A, C, E, G, L, N, P, R.
233 U.S. mail—priority	A, C, E, G, L, N, P, R.
234 U.S. mail—nonpriority	A, C, E, G, L, N, P, R.
235 Foreign mail	A, C, E, G, L, N, P, R.
236 Express	A, C, E, G, L, N, P, R.

Air transport traffic and capacity elements	Service classes
237 Freight	A, C, E, G, L, N, P, R.
250 Nonrevenue tons transported	A, C, E, G, L, N, P, R.
310 Seats available	A, C, E, G, L, N, P, R.
311 First class	A, E, G.
312 Coach	C, E, G.
270 Tons available	A, C, E, G, L, N, P, R.
410 Revenue aircraft miles flown	A, C, E, G, L, N, P, R.
411 Scheduled	A, C, E, G.
412 Extra section	A, C, E, G.
430 Revenue aircraft miles scheduled	A, C, E, G.
431 Scheduled aircraft miles completed	A, C, E, G.
510 Revenue aircraft departures performed	A, C, E, G, L, N, P, R.
511 Scheduled service	A, C, E, G.
512 Extra section	A, C, E, G.
520 Revenue aircraft departures scheduled	A, C, E, G.
521 Scheduled aircraft departures completed	A, C, E, G.
AIRCRAFT OPERATIONS	
420 Nonrevenue aircraft miles flown	Z.
610 Revenue aircraft hours (airborne)	A, C, E, G, L, N, P, R.
620 Nonrevenue aircraft hours (airborne)	Z.
630 Aircraft hours (ramp-to-ramp)	A, C, E, G, L, N, P, R.
MISCELLANEOUS OPERATING ELEMENTS	
810 Aircraft days assigned to service-carrier's equipment	Z.
820 Aircraft days assigned to service-carrier's routes	Z.
830 Hours on other carriers' interchange equipment (airborne)	Z.
921 Aircraft fuels issued (gallons)	Z.
922 Aircraft oils issued (gallons)	Z.

[ER-1401, 50 FR 246, Jan. 3, 1985]

Sec. 19-2 Maintenance of data.

(a) Each large certificated air carrier shall maintain its operating statistics covering the movement of traffic according to the uniform classifications prescribed herein. Uniform codes are also prescribed for each operating element and service class for the convenience of the Board, and at the option of each carrier, may or may not be used for internal carrier purposes.

(b) Each carrier shall maintain data applicable to the specified traffic and capacity elements prescribed in section 19-5, by general service classes as prescribed in section 19-4.

(c) As a general rule the data to be maintained shall represent measurements of physical operations reflected by the revenues and expenses, respectively, allocated to the same time period. Thus, aircraft capacity associated with deferred costs is to be separately maintained and identified in order that in any summarizations:

(1) The capacity information associated with deferred costs may be excluded from capacity associated with costs of the current period; and (2) the revenue and related traffic measurements associated with such capacity may be credited to other flights.

(d) The classifications prescribed for traffic and capacity elements are designed to reflect, on a uniform basis, the physical factors relating to air transport operations as actually conducted. All such statistics shall be compiled in accordance with the definitions set forth in section 03. In principle, elements which are common to different statistics shall be measured on a consistent basis for all statistics of which they are a component. Thus, all aircraft-mile statistics applicable to a particular service or operation shall be compiled on a direct airport-to-airport mileage basis in terms of a consistent measurement of aircraft movement by flight stages. Similarly, all scheduled mileages and all scheduled departures shall be compiled as each flight is scheduled to be performed pursuant to the air carrier's published flight schedule, whereas scheduled miles performed and scheduled departures performed shall both be compiled in accordance with the pattern through which each point scheduled for service is actually served. Consistent with this principle, all statistics pertaining to actual operations shall be compiled in terms of each flight stage as actually performed.

(e) Separate sets of operating statistics shall be maintained for each operating entity as set forth in section 21.

(f) For convenience of reference each prescribed statistical element has been assigned a distinctive four-character alpha-numeric code. The first character of the four-character code denotes the basic class of service; for example, code AXXX denotes Scheduled First-Class Passenger-Cargo Service; code CXXX, Scheduled Coach-Passenger Cargo Service; and ZXXX, All Services. The last three characters denote the particular detailed operating element involved, with the first character of the last three characters denoting the basic operating element involved; for example, X1XX, passengers; X4XX, miles; and X9XX, miscellaneous information.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1400, 50 FR 12, Jan. 2, 1985; ER-1401, 50 FR 246, Jan. 3, 1985]

Sec. 19-3 Accessibility and transmittal of data.

(a) Each large certificated air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready availability for examination by representatives of the Board. All Group III carriers shall transmit to the Board on a monthly basis individual flight stage data for scheduled services as prescribed in section 19-5, summarized by flight number, service segment, service class and aircraft type. Group III air carriers shall utilize either ADP tapes or ADP punched cards for transmitting the prescribed data to the Board unless otherwise specifically permitted by the Board's Office of Comptroller to provide flight stage data on Schedule T-9. All Group I carriers and Group II carriers shall transmit to the Board on a monthly basis individual flight data for scheduled services as prescribed in the reporting instructions for Schedule T-9 in section 25 of this part.

(b) Individual flight stage data for section 418 all-cargo operations shall not be transmitted to the Board but shall be included in the summary Schedules T-1, T-2 and T-3 prescribed in section 25 of this part.

(c) All ADP oriented records shall be transmitted in accordance with standard practices established by the Board's Office of Comptroller. All such data shall be received by the Civil Aeronautics Board at its offices in Washington, D.C., no later than 30 days following the close of the month to which applicable.

(Approved by the Office of Management and Budget under control number 3024-0014)

[ER-1188, 45 FR 48871, July 22, 1980, as amended by ER-1269, 46 FR 63219, Dec. 31, 1981; ER-1401, 50 FR 246, Jan. 3, 1985]

Sec. 19-4 Service classes.

The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered. Accordingly, the operating elements shall be grouped in accordance with their inherent characteristics as follows:

(a) *Scheduled services.* For scheduled services, which shall include traffic and capacity elements applicable to air transportation performed pursuant to published schedules, extra sections and other flights performed as an integral part of the published flight schedules, the following classifications shall be maintained, as applicable:

A000 Scheduled First Class Passenger-Cargo Service.

C000 Scheduled Coach Passenger-Cargo Service.

E000 Scheduled Mixed Passenger-Cargo Service.

G000 Scheduled Cargo Service.

(b) *Nonscheduled services.* For nonscheduled services, which shall include all traffic and capacity elements applicable to the performance of aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the appropriate classification of scheduled services), the following classifications shall be maintained, as applicable:

L000 Nonscheduled Civilian Passenger-Cargo Service.
N000 Nonscheduled Military Passenger-Cargo Service.
P000 Nonscheduled Civilian Cargo Service.
R000 Nonscheduled Military Cargo Service.

(c) *All services.* This classification shall reflect, for the applicable elements, the aggregate amounts for all services performed by the operating entity:

Z000 All services

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1400, 50 FR 12, Jan. 2, 1985]

Sec. 19-5 Air transport traffic and capacity elements.

(a) Within each of the service classifications prescribed in section 19-4, data shall be maintained as applicable to specified air transport traffic and capacity elements.

(b) Under the category of airport-to-airport traffic and capacity data, data applicable to those traffic and capacity elements in scheduled services (including extra sections) which are directly related to the performance of air transportation over each service segment shall be maintained. Separate data with respect to each individual flight stage in scheduled service shall be maintained in a manner which will permit summarization by flight number, service segment, service class, and aircraft type for each monthly period.

(c) Under the category of aircraft operations, data applicable to movements of aircraft, which are not encompassed by the elements included in the airport-to-airport traffic and capacity data, shall be maintained. Effective January 1, 1971, aircraft hours shall be maintained for each flight stage operated in the scheduled service on the basis of both "airborne", and "ramp-to-ramp" time, and in a manner which will permit summarization of the operating elements by aircraft type and, where applicable, by service class for each monthly period.

(d) Under the category of miscellaneous operating factors, data applicable to operating elements not ordinarily assembled from sources associated with records of airport-to-airport traffic or aircraft movements shall be maintained. These elements shall be maintained in a manner which will readily permit identification with each aircraft type for each monthly period.

(e) The elements, by category and alpha-numeric code, for which data are to be maintained in accordance with the above are as follows:

AIRPORT-TO-AIRPORT TRAFFIC AND CAPACITY DATA

Z501 *Interairport distance.* The great circle distance, in statute miles, between airports served by each flight stage. Official interairport mileages are available from the Board's Data Services Section, Information Management Division, Office of Comptroller.

X110 *Revenue passengers enplaned.* The number of revenue passengers enplaned. Data shall be maintained with respect to such enplanements to show for each airport subsequently served by each flight, the number of deplaning revenue passengers, i.e., the on-flight origin and destination thereof. Separate data shall be maintained as follows:

X111 First class.
X112 Coach.

X210 *Revenue cargo tons enplaned.* The total of revenue cargo tons enplaned. Data shall be maintained with respect to such enplanements to show for each airport subsequently served by each flight, the tons of deplaning revenue traffic, i.e., the on-flight origin and destination thereof, for each of the following classes:

X213 U.S. mail—priority.
X214 U.S. mail—nonpriority.
X215 Foreign mail.
X217 Freight.

X130 *Revenue passengers transported.* The number of revenue passengers transported. Separate data shall be maintained as follows:

X131 First class.
X132 Coach.

X150 *Nonrevenue passengers transported.* The number of nonrevenue passengers transported.

X230 *Revenue tons transported.* The number of tons of revenue traffic transported. Separate data shall be maintained for each of the following classes of traffic:

X231 Passenger.
X233 U.S. mail-priority.
X234 U.S. mail-nonpriority.
X235 Foreign mail.
X237 Freight.

X250 *Nonrevenue tons transported.* The number of nonrevenue tons of traffic transported.

X310 Seats available. The number of seats available. This figure shall reflect the actual number of seats available on the particular aircraft with which each flight stage is performed. Separate data shall be maintained as follows:

X311 First class.
X312 Coach.

X270 Tons available. The tons available. This figure shall reflect the payload capacity actually provided by the particular aircraft with which each flight stage is performed.

X410 Revenue aircraft miles flown. The revenue aircraft miles flown. All such data shall be maintained in accordance with the airport pairs between which service is actually performed whether or not in conformance with published schedules. At the option of the air carrier, aircraft miles may be developed from the data maintained for aircraft departures performed, described in code reference X510. Separate records shall be maintained as follows:

X411 Scheduled.
X412 Extra section.

X430 Revenue aircraft miles scheduled. The number of revenue aircraft miles scheduled. All such data shall be maintained in conformance with the airport pairs between which service is scheduled whether or not in accordance with actual performance. At the option of the air carrier, scheduled aircraft miles may be developed from the data maintained for scheduled aircraft departures, described in code reference X520.

X431 Scheduled aircraft miles completed. The aircraft miles performed on scheduled flights computed between only those scheduled points actually served. Service to nonscheduled points should not be considered in determining scheduled aircraft miles completed.

X510 Revenue aircraft departure performed. The number of revenue aircraft departures performed. Separate data shall be maintained for each of the following classes of performed departures:

X511 Scheduled.
X512 Extra section.

X520 Revenue aircraft departures scheduled. The number of revenue aircraft departures scheduled.

X521 *Scheduled aircraft departures completed.* The number of takeoffs performed at each airport pursuant to published schedules, exclusive of extra sections to schedule departures. This element should include only those scheduled departures included in element X520 which are actually performed.

AIRCRAFT OPERATIONS

Z420 *Nonrevenue aircraft miles flown.* The nonrevenue aircraft miles flown based upon the airport-to-airport distance of each flight stage. In circumstances where an interairport movement is not involved, the mileage may be computed by converting nonrevenue aircraft hours at the appropriate speed for the particular flight.

X610 *Revenue aircraft hours (airborne).* The revenue aircraft hours flown based upon the airborne time of each aircraft movement.

Z620 *Nonrevenue aircraft hours (airborne).* The aircraft hours flown in nonrevenue service based upon the "airborne" time of each aircraft movement.

Z630 *Aircraft hours (ramp-to-ramp).* The aircraft hours flown in both revenue and nonrevenue services, based upon the "ramp-to-ramp" time of each aircraft movement.

MISCELLANEOUS OPERATING ELEMENTS

Z810 *Aircraft days assigned to service-carrier's equipment.* The number of aircraft days that owned or rented aircraft are in the possession of the air carrier and assigned to services of the reporting air carrier or assigned to services of other carriers under aircraft interchange agreements. Aircraft days shall be allocated between operating entities as follows:

(1) Aircraft assigned exclusively to a particular operation shall be recorded for the operation to which assigned.

(2) Aircraft used interchangeably in two or more operating entities shall be prorated between entities on the basis of the ramp-to-ramp time the individual aircraft was in operation in each entity.

(3) The time of aircraft in maintenance or overhaul, or in reserve status, shall be assigned between operating entities on the basis of the relative ramp-to-ramp time all aircraft of the same type were in operation in each entity.

Z820 *Aircraft days assigned to service-carrier's routes.* The number of aircraft days that owned or rented aircraft and aircraft of others under interchange agreements are assigned to services perfomed by the air carrier.

Z830 *Hours on other carriers' interchange equipment (airborne).* The airborne hours flown with aircraft of others in both revenue and nonrevenue services of the air carrier under aircraft interchange agreements.

Z921 *Aircraft fuels issued (gallons).* The gallons of aircraft fuels issued during the current accounting period for both revenue and nonrevenue flights.

Z922 *Aircraft oils issued (gallons).* The gallons of aircraft engine oils issued during the current accounting period for both revenue and nonrevenue flights.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 247, Jan. 3, 1985]

Sec. 19-6 Public disclosure of service-segment data.

Service-segment data in reports submitted by air carriers to the Board and in data banks and tabulations of the Board shall be withheld from public disclosure only as provided herein:

(a) Data relating to international operations (defined as follows: service segments with one or both terminals outside of territory under U.S. jurisdiction; service segments coded as applicable to other than domestic operations pursuant to this Part 241, section 21(i); and any data elements in domestic segments the disclosure of which would reveal the volume of traffic related to international operations such as deplanement data on domestic service segments when any downline point is outside territory under U.S. jurisdiction, and enplanement and deplanement statistics for any domestic service segment that is immediately preceded by a service segment whose originating point is outside territory under U.S. jurisdiction) shall only be disclosed as follows:

(1) To an air carrier currently submitting service-segment data pursuant to the requirements of this Part 241 and to a legal or consulting firm or other organization designated by such air carrier to use on its behalf such data in connection with a specific assignment by such carrier.

(2) To foreign governments and foreign users as provided in formal reciprocal arrangements between the foreign and U.S. Government for the exchange of comparable service-segment data.

(3) To parties to any proceeding before the Board to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board. Any data to which access is granted pursuant to this section may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(4) To agencies and other components of the U.S. Government for their internal use only.

(5) To state and local governing bodies for their internal use only.

(6) To such persons and in such circumstances as the Board determines to be in the public interest or consistent with its regulatory functions and responsibilities.

(7) The Board may, from time to time, publish summary information compiled from the international service-segment data, in a form which would not identify individual carrier data.

(Secs. 204(a), 407, 1104, Federal Aviation Act of 1958, as amended, 72 Stat 743, 766, 797; (49 U.S.C. 1324, 1377, 1504))

[ER-973, 41 FR 46586, Oct. 22, 1976, as amended at 46 FR 33023, June 23, 1981]

Sec. 19-7 Passenger origin-destination survey.

(a) All large certificated air carriers conducting scheduled passenger operations (except helicopter and wholly intra-Alaska carriers) shall participate in a Passenger Origin-Destination Survey covering domestic and international operations, as described in the instruction manuals entitled, *Instructions to Air Carriers for Collection and Reporting Passenger Origin-Destination Survey Statistics, Instructions to Air Carriers for Collection and Reporting Passenger Origin-Destination Survey Statistics—Special Edition for Carriers Reporting for the First Time on or After October 1, 1979* and *Passenger Origin-Destination Directives* issued by the Board's staff. Copies of these manuals have been provided to carriers and all revisions made after the adoption of this section will be mailed to each carrier. Copies are also available through the Information Management Division, Office of Comptroller.

(b) Those air carriers having access to automatic data processing services shall utilize either magnetic computer tape or punched cards for transmitting the prescribed data to the Board. Those carriers not having access to automatic data processing equipment shall utilize CAB Form 2787 in typewritten form.

(c) A 10 percent sample of flight coupons shall be selected for reporting in accordance with the instruction manuals and the directives mentioned in paragraph (a) of this section. The data to be recorded and submitted from reportable flight coupons, as stipulated in the instruction manuals and directives, shall include the following data elements: point of origin; carrier on each flight-coupon stage, fare-basis on each flight-coupon stage; points of stopover or connection (interline and intraline), point of destination, number of passengers, total dollar value of ticket (fare plus tax).

(d) Similar international Passenger Origin-Destination Survey data covering the operations of the non-U.S. carriers are not generally available to the Civil Aeronautics Board, the U.S. carriers, or U.S. interest. Therefore, because of the damaging competitive impact on U.S. flag carriers and the adverse effect upon the public interest that would result from unilateral disclosure of the U.S. survey data, the Civil Aeronautics Board has determined its policy to be that the international data in the Passenger Origin-Destination Survey shall be disclosed only as follows:

(1) To an air carrier directly participating in, and contributing input data to, the survey, or to a legal or consulting firm or other organization designated by an air carrier to use on its behalf O and D data in connection with a specific assignment by such carrier.

(2) To parties to any proceeding before the Board to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board. Any data to which access is granted pursuant to this section may be introduced into evidence subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government.

(4) To other persons upon a showing that the release of the data will serve specifically identified needs of U.S. users which are consistent with U.S. interests.

(5) To foreign governments and foreign users as provided in formal reciprocal arrangements between the foreign and U.S. governments for the exchange of comparable O and D data.

(e) The Board reserves the right to make such other disclosure of the subject data as is consistent with its regulatory functions and responsibilities.

(Approved by the Office of Management and Budget under control number 3024-0017)

[ER-1201, 45 FR 67658, Oct. 14, 1980, as amended by ER-1372, 49 FR 1982, Jan. 17, 1984; ER-1379, 49 FR 14301, Apr. 11, 1984; ER-1400, 50 FR 12, Jan. 2, 1985]

GENERAL REPORTING PROVISIONS—LARGE CERTIFICATED AIR CARRIERS

Section 21—Introduction to System of Reports

(a) Each large certificated air carrier subject to the Federal Aviation Act of 1958, as amended, shall file with the Civil Aeronautics Board, monthly, quarterly, semiannually, and annually CAB Form 41 Reports of financial and operating statistics as prescribed herein unless waiver has been made by the Civil Aeronautics Board.

(b) The system prescribed provides for the submission by each air carrier of five classes of financial and operating statistics, on individual schedules of the CAB Form 41 Report, grouped as follows:

A. Certification.
B. Balance Sheet Elements.
P. Profit and Loss Elements.
T. Traffic and Capacity Elements.
G. General Corporate Elements.

(c) The prescribed system of reports provides that the frequency of reporting shall be monthly for some schedules, quarterly for some, semiannually for some and annually for others. It also provides in some areas for the classification of large certificated air carriers into Group I, Group II, and Group III with the form and content differentiated as between groups.

(d) Each schedule of the prescribed CAB Form 41 Report has been assigned a specific code. The prefix alphabetical codes A, B, P, T, and G, respectively, have been employed to denote certification, balance sheet, profit and loss, traffic and capacity, and general corporate elements. The digits immediately following the alphabetical prefix designate the particular schedule.

(e) Upon approval by the Civil Aeronautics Board, the carrier may supply its own computer prepared forms provided each schedule conforms with the size and format of the forms prescribed herein.

(f) A good quality black ribbon shall be used in preparing the original copy of each schedule submitted to the Civil Aeronautics Board. In no event shall photocopy or similar processes be used nor shall any information be typed on the reverse side of copies submitted to the Civil Aeronautics Board.

(g) Four separate air carrier entities shall be established for large certificated air carriers conducting scheduled service for the purpose of submitting the prescribed reports. They are as follows: (1) Domestic operations; (2) operations via the Atlantic Ocean; (3) operations via the Pacific Ocean; and (4) operations in Latin American areas. With respect to the first classification, the domestic entity shall embrace all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands, and shall also include Canadian transborder operations. The reports to be submitted by each entity shall be comparable to those required of a distinct legal entity whether the reporting entity constitutes such an entity, a semiautonomous physically separated operating division of the carrier, or an entity established for reporting purposes only.

(h) Two separate entities shall be established for large certificated air carriers predominantly engaged in conducting charter activities for the purpose of submitting the prescribed reports: (1) Domestic operations; and (2) international operations. The domestic entity includes all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. All other operations will be in the international entity.

(i) The entities for which separate reports shall be made by the different route and charter air carriers will be set semiannually by the Board's Comptroller.

(j) As a general rule separate reports shall be filed for the air carrier and for each associated company air carriers as defined in section 03 which is an air carrier. However, transactions of associated companies in which 100 percent equity control resides in the reporting air carrier shall be consolidated with transactions of the reporting air carrier when such associated companies perform services related to the transport operations of the reporting air carrier almost exclusively and are not engaged in air transportation for their own account.

(k) Generally, route air carriers' nonscheduled services shall be treated as an integral part of the reporting entity to which most closely related without regard to the geographic area in which such nonscheduled services may actually be performed. However, supplemental reports shall be made of nonscheduled services (including service for the Department of Defense) in areas not encompassed by the prescribed reporting entity in any month in which the available ton-miles of such nonscheduled services exceed 5 percent of the available ton-miles of the reporting entity. Such supplemental reports shall continue until waived by the Board upon a showing that such nonscheduled operations will not in the subsequent 12-month period exceed the 5-percent limit. The supplemental reports to be filed each month or calendar quarter, as applicable, shall be comprised of report Schedules P-5, T-1, and T-2. Transport and nontransport revenues pertaining to such separately reported nonscheduled services shall be reported on Schedule P-2 each quarter.

(l) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Board, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P-1 through P-8, T-1, and T-2. The letter "D" shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

[ER-1027, 42 FR 60128, Nov. 25, 1977, as amended by ER-1073, 43 FR 40453, Sept. 12, 1978; ER-1073, 44 FR 1970, Jan. 9, 1979; ER-1188, 45 FR 48871, July 22, 1980; ER-1297, 47 FR 32919, July 30, 1982; ER-1400, 50 FR 12, Jan. 2, 1985; ER-1401, 50 FR 247, Jan. 3, 1985]

Section 22—General Reporting Instructions

(a) One copy of each schedule in the CAB Form 41 report shall be filed with the Civil Aeronautics Board and shall be received on or before the due date indicated for each such schedule in the list titled "Due Dates of Schedules in CAB Form 41 Report."

LIST OF SCHEDULES IN CAB FORM 41 REPORT

[See footnotes as end of table]

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B-1	Balance Sheet	Q	(1)	X	X
B-1.1	Balance Sheet	S-A	(2)		
B-7	Airframes and Aircraft Engines Acquired	Q		X	X
B-8	Flight Equipment Retired	Q		X	X
B-12	Statement of Changes in Financial Position	Q	(1)	X	X
B-43	Inventory of Airframes and Aircraft Engines	A	X	X	X
P-1.1	Statement of Operations	S-A	(2)		
P-1.2	Statement of Operations	Q	(1)	X	X
P-1(a)	Interim Operations Report	M	X	X	X
P-2	Notes to CAB Form 41 Report	Q	(1)	X	X
P-5.1	Aircraft Operating Expenses	Q(1)/S-A(2)	X		
P-5.2	Aircraft Operating Expenses	Q		X	X
P-6	Maintenance, Passenger Service and General Administrative Expense Functions.	Q	(1)	X	X
P-7	Aircraft and Traffic Servicing, and Promotion and Sales Expense Functions—Group II and Group III Air Carriers.	Q		X	X
P-8	Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers.	Q			X
P-10	Employment Statistics by Labor Category	A	(1)	X	X
P-12(a)	Fuel Consumption by Type of Service and Entity	M	(1)	X	X
T-1(a)	Traffic and Capacity Statistics by Class of Service	M	X	X	X
T-1(b)	Traffic and Capacity Statistics by Class of Service-Scheduled Services.	M		X	X
T-1(c)	Traffic and Capacity Statistics by Class of Service-Nonscheduled Services.	M		X	X
T-2	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft.	Q	X	X	X
T-3(a)	Airport Activity Statistics-Scheduled Revenue Service	Q	X	X	X
T-3(b)	Airport Activity Statistics-Scheduled Revenue Service	Q	X	X	X
T-3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	Q	X	X	X
T-8	Report of All-Cargo Operations	A	(3)	(3)	(3)
T-9	Nonstop Market Report	M	X	X	
G-41	Persons Holding More than 5 Per Centum of Respondent's Capital Stock or Capital.	A	(1)	X	X

M=Monthly. Q=Quarterly. S-A=Semiannually. A=Annually. X-All Carriers.

[1] Applicable to Group I air carriers with annual operating revenues of $10 million or more.

[2] Applicable to Group I air carriers with annual operating revenues below $10 million.

[3] Applicable to carriers conducting Section 418 all-cargo operations.

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due Dates[1]	Schedule No.
January 20	P-12(a).
January 30	P-1(a), T-1, T- 2,T-3, T-9.
February 10[2]	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8, P-10.
February 20	P-12(a).
March 1	P-1(a),T-1,T-9.
March 20	P-12(a).
March 30	B-43, P-1(a), G-41, T-1, T-8, T-9.
April 20	P-12(a).
April 30	P-1(a), T-1, T-2, T-3, T-9.
May 10	A, B-1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8.
May 20	P-12(a).
May 30	P-1(a), T-1, T-9.
June 20	P-12(a).
June 30	P-1(a), T-1, T-9.
July 20	P-12(a).
July 30	P-1(a), T-1, T-2, T-9.
August 10	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8.
August 20	P-12(a).
August 30	P-1(a), T-1, T-9.
September 20	P-12(a).
September 30	P-1(a), T-1, T-9.
October 20	P-12(a).
October 30	P-1(a), T-1, T-2, T-3, T-9.
November 10	A, B-1, B-7, B-8, B-12, P-1.2, P-2, P-5.1, P-5.2 P-6, P-7, P-8.
November 20	P-12(a).
November 30	P-1(a), T-1, T-9.
December 20	P-12(a).
December 30	P-1(a), T-1, T-9.

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.

[2] B and P reporting due dates are extended to March 30 if preliminary schedules are filed at the Board by February 10.

(b) Each large certificated air carrier shall file the applicable schedules of the CAB Form 41 Report with the Civil Aeronautics Board in accordance with the above instructions with the following exceptions:

(1) The time for filing B and P report schedules for the final quarter or semiannual period of each calendar year may be extended to the following March 30 if the preliminary Schedules B-1 or B-1.1 and P-1.1 or P-1.2 are submitted, as applicable, and are received on or before their respective due dates.

(2) For the third month of any calendar quarter, Schedule P-1(a) need not be filed if Schedule P-1.1 or P-1.2 for the quarter or semiannual period, as applicable, is received on the due date prescribed for Schedule P-1(a).

(3) Income and expense data on Schedule P-1(a) for each month will be withheld by the Board from public disclosure, until such time as (i) the semiannual or quarterly financial reports are due, (ii) the semiannual or quarterly financial reports are filed, or (iii) information covered by monthly reports is publicly released by the carrier concerned, whichever occurs first. Before that time, income and expense data reported on Schedule P-1(a) will be disclosed to parties to any proceeding before the Board to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board. Any data to which access is granted may be introduced into evidence, subject to the normal rules of admissibility of evidence. The Board will make other disclosure of these data upon its own motion or upon application of any interested person, when the Board finds the public interest so requires. The Board may, from time to time, publish summary information compiled from Schedule P-1(a) in a form which will not identify the individual carrier. At the request of an air carrier, and upon a showing by such air carriers that public disclosure of its preliminary year-end report would adversely affect its interests and would not be in the public interest, the Board will withhold such preliminary year-end report from public disclosure until such time as (i) the final report is filed, (ii) the final report is due, or (iii) information covered by the preliminary report is publicly released by the carrier concerned, whichever occurs first.

(c) If circumstances prevent the filing of a report on or before the prescribed due date, consideration will be given to the granting of an extension upon receipt of a written request therefor. To provide ample time for consideration and communication to the air carrier of the action taken, such a request must be delivered to the Board in writing at least three (3) days in advance of the due date, setting forth good and sufficient reason to justify the granting of the extension and the date when the report can be filed. Except in cases of emergency, no such request will be entertained which is not in writing and received by the Civil Aeronautics Board at least three (3) days before the prescribed due date. If a request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(d) [Reserved]

(e) All financial data reported on B, P and G schedules shall reflect the status of the air carrier's books of account for the period for which the report is being made and shall conform to the instructions contained in this Uniform System of Accounts and Reports. At the option of the air carrier, Group III air carriers may round reported financial data to the nearest thousands of dollars by typing "($000)" at the top of each amount column. All Group I and Group II air carriers may, at their option, round reported financial data to the nearest whole dollars by dropping the cents. All rounded amounts must be balanced within and between schedules. This option applies only to the submission of hardcopy reports. Instructions for the submission of data in ADP format are contained in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division.

(f) Traffic and other operational statistics included in schedules of the CAB Form 41 reports shall reflect data pertaining to the month, quarter or 12-months-to-date period for which the report is being made.

(g) Adjustments correcting errors in previously reported traffic and other operational statistics shall not be included in data reported in schedules for the current period but shall be effected by submission of corrected schedules for the period to which applicable or, if only a few items are involved, by written notice and authorization to the Civil Aeronautics Board to correct previously filed reports except that any correction which amounts to less than one-half of one percent (0.5%) of the corrected amount for the month to which related may be included in the report for the current month provided the amount of the correction is clearly noted on the Form 41 Report.

(h) All letters and statements of correction or revision of reported data shall be a part of the CAB Form 41 reports.

(i) All changes in accounting methods having a material impact upon the particular financial elements involved, and all changes in methods of computing and reporting traffic and capacity statistics having a material impact upon the particular statistic involved shall be adequately explained and identified in the report first reflecting such changes. Such explanations related to financial position or financial results shall be made on CAB Form 41 Schedule P-2. Changes in methods for computing or reporting traffic and capacity statistics shall be identified and explained on a separate sheet attached to the first report affected. (See sec. 2-16.) The reporting requirements shall not be construed, in any sense, as relieving the air carrier of the responsibility for conforming its procedures to those otherwise prescribed in this system of accounts and reports.

(j) All financial statements released by carriers to the public reflecting a financial position or operating results for dates or reporting periods not covered by reports on file with the Board shall be filed with the Board simultaneously with their public release.

(Approved by the Office of Management and Budget under control number 3024-0013)

[ER-755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For Federal Register citations affecting Part 241, section 22, see the List of CFR Sections Affected in the Finding Aids section of this volume.

FINANCIAL REPORTING REQUIREMENTS

Section 23—Certification and Balance Sheet Elements

Schedule A—Certification

(a) The certification of the CAB Form 41 Report shall be signed by an elective corporate officer, executive or director, or such other person as may be authorized by the carrier to sign the certification provided a written authorization disclosing the individual's name and title is forwarded to the Civil Aeronautics Board. Since corrections or revisions of reported data are a part of the CAB Form 41 Report, all correspondence relating to such matters shall be signed only by persons authorized to sign the certification.

(b) The certification of the Form 41 reports, embodied in Schedule A thereof, shall read as follows:

> I, the undersigned (Title of officer in charge of accounts) —— of the (Full name of the reporting company) —— do certify that this report and all schedules and supporting documents which are submitted herewith or have been submitted heretofore as parts of this report filed for the above indicated period have been prepared under my direction; that I have carefully examined them and declare that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement, after adjustments to reflect full accruals, of the operating revenues and expenses, income items, assets, liabilities, capital, surplus, and operating statistics for the periods reported in the several schedules; that the various items herein reported were determined in accordance with the Uniform System of Accounts and Reports for Large Certificated Air Carriers prescribed by the Civil Aeronautics Board; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in explanations accompanying the financial and statistical statements.

Schedule B-1 Balance Sheet

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) This schedule shall reflect the balances at the close of business on the last day of each calendar quarter for the overall or system operations of each air carrier in conformance with the provisions of sections 4, 5 and 6.

(c) Individual proprietors or partners shall report the aggregate capital contributed by the proprietor or partners in account 2890 Additional Capital Invested.

Schedule B-1.1—Balance Sheet

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million.

(b) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Board's Information Management Division upon request. This code will then be inserted in the space provided for "carrier code."

(c) This schedule shall show the account balances at the close of business on June 30 or December 31, as applicable, of each semiannual reporting period.

(d) "Current Assets" shall include all resources that may reasonably be expected to be realized in cash or sold or consumed within one year. This group of assets is classified into three basic accounts:

(1) "Cash and Equivalents" shall include cash on hand and on deposit, U.S. Government securities, and other temporary cash investments.

(2) "Notes and Accounts Receivable-Net" shall include general traffic accounts receivable, government receivables, notes and receivables from associated companies, officers, employees and others, and a deduction for a reasonable allowance for bad debts.

(3) "Other Current Assets" shall contain all other current assets not provided for in the above classifications. This account shall include, but is not limited to, short-term prepayments, expendable spare parts, supplies and other inventories of flight equipment replacement parts that are usually replaced rather than repaired, and materials and supplies held in stock, such as fuel and oil, expendable tools, office supplies and food service supplies. Spare parts may be reduced by an allowance for obsolescence to provide for losses in value.

(e) "Property and Equipment" shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the deception of land, shall be reported net of accumulated depreciation or amortization.

(f) "Other Assets" shall included all assets not included in the above categories, such as long-term investments, long-term prepayments, long-term receivables, deferred charges, intangible assets, equipment purchase deposits, and construction work in progress.

(g) "Current Liabilities" shall include all obligations, the liquidation of which is reasonably expected to require the use of existing resources within one year. This group of liabilities is classified into three basic accounts:

(1) "Notes and Accounts Payable" shall include any payments on long-term debt, short-term notes and accounts payable, and accrued expenses that are payable within one year.

(2) "Accrued Taxes" shall include tax liabilities, such as those imposed on income, property and payroll, which are reasonably expected to be liquidated within one year.

(3) "Other Current Liabilities" shall include all current liabilities which are not provided for elsewhere, such as air traffic liabilities for unused transportation sold (includes sales of transportation on both the reporting carrier and other carriers).

(h) "Long-Term Debt" shall include all obligations which are not reasonably expected to be liquidated within one year. Typical examples include bonds payable, long-term notes payable, lease obligations, and pension obligations.

(i) "Other Liabilities" shall include any debts or obligations which are not properly listed in the "Current Liabilities" or "Long-Term Debt" sections.

(j) "Deferred Credits" shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition. Included in this account are deferred income taxes and deferred investment tax credits.

(k) "Stockholder's Equity" shall be reported as follows:

(1) "Capital Stock" shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

(2) "Other Paid-In Capital" shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(3) "Retained Earnings" shall represent the net income or loss from all operations of the corporate entity less dividends.

(4) "Treasury Stock" shall represent the cost of stock issued by the carrier and reacquired by it but not retired or cancelled.

(l) The statement of certification shall be signed by the carrier's chief accounting officer.

(m) All substantive matters that may materially influence interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the schedule or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in a note attached to this schedule and cross-referenced to the affected account or accounts.

Schedule B-7—Airframes and Aircraft Engines Acquired

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported in aggregate for each type or model; however, aircraft engines obtained under capitalized leases shall be separately reported under a caption entitled: Capital Leases—Aircraft Engines. Airframe units leased from others for a period of more than 90 days shall be reported in a separate subsection of this schedule, captioned as follows: Capital Lease—Airframe Units; and Operating Leases—Airframe Units. In addition, a notation shall be made by license number of airframe units of the air carrier returned after lease to others for a period of more than 90 days. Airframe units obtained through interchange lease arrangements shall not be so reported.

(c) All dates shall indicate the day, the month and the year; shall be provided on a unit basis for airframes only; and, shall be reported for each aircraft engine group by date of transaction.

(d) Report shall be made in the quarter in which each airframe and each group of aircraft engines is actually acquired irrespective of whether the cost thereof is reflected in the property and equipment accounts during the current quarter or a subsequent quarter. If the cost data are not reflected in the current quarter a footnote to that effect shall accompany the report of acquisition. The cost shall be reported during the quarter in which determined and the equipment to which related shall be listed again in this schedule, with complete information, and shall be identified as being the same equipment reported at the earlier date.

(e) Column 2, "Date Placed in Transport Service" shall relate to airframes only and shall be the date on which each airframe was or will be placed in regular service by the reporting entity. If this date is not known at the time of submission of the report, an estimated date bearing the notation "estimate" shall be provided with the exact date shown by footnote on a subsequent Schedule B-7 in which the airframe is reidentified by license number, type of aircraft and date acquired.

(f) Column 8, "Maximum Seat Capacity" shall reflect the number of passenger seats installed in each airframe acquired. When the configuration of airframes provides sleeping accommodations, the passenger capacity shall be shown in terms of a sleeper version and non-sleeper version. When airframes are designed for multiple adjustable seating configurations, the maximum number of seats for which designed shall be reported. When the seating configuration of airframes is modified subsequent to original acquisition, the revised passenger capacity of each airframe shall be reported in the quarter in which modified and referenced to identify original capacity reported.

(g) Column 9, "Cost" shall reflect the book cost of airframes and aircraft engines acquired and the cost of improvements, betterments or other additions made to the acquired equipment.

Schedule B-8—Flight Equipment Retired

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) The indicated data shall be reported for the sale or retirement of each airframe, each type of aircraft engine (stating the number of units retired) and, to the extent retired along with airframes and engines, in aggregates by accounts, for operating property and equipment included in Accounts 1603 through 1608 and nonoperating property and equipment included in Accounts 1703 through 1708. Disposition of properties in Accounts 1608 and 1708 not related to airframe and aircraft engine retirements shall be reported in a separate group for each account. Airframe units leased from others for a period of more than 90 days shall be reported, upon return to the lessor, in a separate subsection of this schedule and captioned as follows: Capital Leases-Airframe Units; and Operating Capital Leases-Airframe Units. In addition a notation shall be made by license number and name of lessee of airframe units leased to others for a period of more than 90 days; moreover, airframe units leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule. Airframe units leased under interchange arrangements shall not be so reported. Aircraft engines obtained under capital leases shall be separately reported under a caption entitled: Capital Leases-Aircraft Engines. Additionally, aircraft engines leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule.

(c) Retirements shall be listed in the numerical sequence of the property and equipment account to which related.

(d) All dates shall include the day, the month and the year of each transaction.

(e) *Column* 7, *"Cost"* shall reflect the book cost of the retired property.

(f) Column 9, "Realization" shall reflect the proceeds from disposition, including any insurance proceeds.

(g) Column 10, "Disposition," shall reflect the name of the person or organization to which airframes and aircraft engines are sold or a notation as to the nature of the retirement and the account to which any depreciated cost has been charged, if not sold. Items included in accounts 1607, 1608, 1707, and 1708, sold as a part of airframe or aircraft engine sales transactions, shall also be identified by the name of the buyer. Other sales of items included in these accounts shall be reported in a separate group in aggregate for each property account affected.

Schedule B-12—Statement of Changes in Financial Position

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) In determining working capital generated by operations, net income as reported on Schedule P-1.1. or Schedule P-1.2 shall be increased by expenses not requiring working capital in the current period and shall be decreased by income not generating working capital in the current period such as gains on property retirements and undistributed earnings of investor controlled companies. Those items which do not generate working capital in the current period shall be included net on line 6 "Other." If the amount reported on line 6, line 12, or line 18 exceeds 5 percent of the total sources or applications, a footnote shall be added to this schedule disclosing the components amounts.

(d) Generally, all items shall be reported in gross amounts. Items not resulting in net working capital changes such as exchanges of bonds or capital stock for fixed assets shall be reported as a source of working capital from the incurrence of debt or issuance of stock and a concurrent application of working capital for the asset acquisition. Likewise, the conversion of debt for capital stock shall be reported as a source of working capital for capital stock issued and an application of working capital for the debt retired.

Schedule B-43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by all Group I, Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Type and model refers to aircraft models such as B-707-100, B-707-200, DC-10-40, Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. Airframes that are authorized for operation over water under FAA regulation FAR 121 shall be so indicated by asterisk.

(c) Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(d) Data in this schedule shall be grouped and subtotaled as data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under operating and capital leases shall be reported, by type of lease, in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped within those groups according to operating and nonoperating equipment.

(e) Data pertaining to airframes and aircraft engines obtained under operating leases shall be listed in columns 1 through 7; the cost of improvements to equipment under operating leases shall be reported in columns 8 through 12.

(f) Column 7 "Available Capacity (Weight)" shall reflect, for each reported aircraft type, the available capacity (stated in pounds) that is used in computing the available ton-miles reported on Schedules T-1 and T-2.

(g) Column 8 "Acquired Cost or Capitalized Value" shall include (1) the acquisition cost of owned airframes and aircraft engines; (2) the total capitalized cost of obtaining airframes and engines under capital leases; and (3) the cost of improvements to airframes and engines obtained under operating leases.

(h) Column 9 "Allowance for Depreciation or Amortization" shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines and (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases.

(i) Column 10 "Depreciated Cost or Amortized Value" shall be calculated as either (1) Acquired Cost (column 6) less the Allowance for Depreciation (column 7) or (2) Capitalized Value (column 6) less Amortization (column 7).

(j) Column 11 "Estimated Residual Value" shall state in dollars the residual value assigned to owned and capital-leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(k) Column 12 "Estimated Depreciable or Amortizable Life (Months)" shall state the estimated depreciable or amortizable life from the date of acquisition of each airframe and each group of aircraft engines.

[ER-755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For Federal Register citations to section 23 of Part 241, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Section 24—Profit and Loss Elements

Schedule P-1.1—Statement of Operations

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $10 million. Data reported on this schedule shall be for the overall or system operations of the air carrier.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31. Data reported in the "12 Months-to-Date" column shall represent for each individual item the sum of the amount reported in the "Current Period" column and the next previous six-month period.

(c) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Board's Information Management Division upon request. This code will then be placed in the space provided for "carrier code."

(d) "Operating Revenue" shall be put in categories as follows:

(1) "Transport Revenue" shall include the revenue generated by the performance of air transportation services. This category shall be subdivided as follows:

(i) "Scheduled Service" shall include all transport revenue derived from operations between pairs of points which are served on a regularly scheduled basis. Transport revenue received from scheduled service operations shall be subdivided as follows:

(A) *Passengers.* Revenue generated from the transportation of passengers shall be included in this category.

(B) *Other.* Revenue generated by the transportation of property and mail shall be included in this category.

(ii) "Nonscheduled Service" shall include all transport revenue derived from operations between pairs of points which are not served on a regularly scheduled basis.

(2) "Transport-Related Revenue" shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. This category shall be subdivided as follows:

(i) *Public Service Revenue.* This category shall include amounts of compensation paid to the carrier under section 419 of the Federal Aviation Act.

(ii) *Other.* This category shall include other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, interchange sales, and cargo pick-up and delivery charges.

(e) "Operating Expense" shall be segregated as follows:

(1) "Flying Operations" shall include expenses incurred directly in the inflight operation of aircraft and expenses incurred in the holding of aircraft and aircraft operation personnel in readiness for assignment to an inflight status.

(2) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(3) "General and Administrative" shall include that portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(4) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(5) "Transport-Related Expense" shall include all expenses associated with the transport-related revenues reported on line 5 of this schedule.

(f) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total operating revenues.

(g) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and shall be subdivided as follows:

(1) Interest Expense.

(2) Other Nonoperating (Net).

(h) "Income Tax" shall reflect the provisions for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(i) "Discontinued Operations, Extraordinary Items or Accounting Changes" shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

(j) Any air carrier that does not file Schedule P-1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the sixth month of any semiannual period during which the option is exercised, type in the bottom margin of this statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P-1(a).

Schedule P-1.2—Statement of Operations

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Route and charter carriers shall file separate statements of operations for each separate operating entity and for the overall, or system operations.

(c) Data reported on this schedule shall conform with the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Data reported in the "12 Months-to-Date" column shall represent for each item the sum of amounts reported in the "Quarter" column for the current and next previous three quarters.

(e) [Reserved]

(f) Any air carrier that does not file Schedule P-1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P-1(a).

Schedule P-1(a) Interim Income Statement

(a) This schedule shall be filed by all air carriers.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) Data reported on this schedule shall reflect the results of operations for the month covered by the report and shall conform to the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Air carriers shall report on this schedule:

(1) Total operating revenues,

(2) Total operating expenses,

(3) Operating profit or loss,

(4) Net income,

(5) Passenger revenues—scheduled service,

(6) Public service revenues (subsidy) and other information on

(7) The total number of full-time and

(8) Part-time employees. Total number of full-time employees and total number of part-time employees shall reflect for the overall or system operations of the air carrier the total number of full-time and part-time employees, respectively, who worked or received pay for any part of the pay period(s) ending nearest the 15th day of the month. For the purposes of this part, "part-time employees" means those employees hired to work less than the number of hours that is customary or standard for their occupational specialty.

(e) In the event of a labor strike, the "number of employees" to be reported on this schedule shall be determined on and actual payroll basis. Actual payroll shall be determined in accordance with paragraph (d) of these reporting instructions. An air carrier that on October 24, 1978, held a certificate issued under section 401 of the Act shall also report in a footnote on this schedule the number of full-time employees who were deprived of employment because of a strike (*i.e.*, the number of full-time employees who, but for a strike, would have been included in the number reported in accordance with paragraph (d)(7)).

Schedule P-2—Notes to CAB Form 41 Report

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity and for the overall, or system operations of the carrier.

(c) All substantive matters which may influence materially interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the Form 41 report or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in this schedule and cross-referenced to the affected account or accounts. The informative disclosure on this schedule for the system operations of the air carrier shall conform, at the end of each carrier's fiscal or calendar year, with the footnotes prepared for audited financial statements.

(d) The amounts and estimated delivery dates of any purchase commitments of material size and not of a recurrent routine character shall be explained on this schedule. In the case of commitments involving flight equipment, the amount for each equipment type may be given in total, including any engines, airframes and spares; but the number of airframes and the number of engines by type shall be given, as well as the estimated delivery date for each complete aircraft. Reports on commitments other than for flight equipment are required only in the December 31 report of each calendar year.

(e) For route air carriers, this schedule shall reflect at the end of each calendar quarter amounts reported in balance sheet accounts 1550 Special Funds and 1685 Equipment Purchase Deposits and Advance Payments representing funds segregated, or on deposit with manufacturers, for the purchase of equipment, including any capitalized interest thereon. (See section 2-10 Capitalization of Interest.)

(f) The conversion from the cost method to the equity method of carrying investments in investor controlled companies shall be explained on this schedule. Any change in the basis of accounting for investments in investor controlled companies and other associated companies, (*e.g.*, change from associated to investor controlled company or vice versa) shall be noted here and reported as required by section 22(d).

(g) Each route air carrier shall include on this schedule a description of each interruption in air transport operations, the aggregate effect of which is ten (10) percent or more of the scheduled revenue plane-miles which, except for the interruption, would have been operated during the month or either of 2 consecutive months affected. The information to be reported for each such interruption in operations shall consist of:

(1) For the report period in which partial or complete interruption first occurs, the nature of the interruption and dates of partial and/or complete cessation of operations, as applicable; (2) for each report period until full resumption of operations, an estimate of the revenue plane-miles canceled in each month of the quarter because of the interruption; and (3) for the report period in which scheduled operations are resumed, dates of partial and/or complete resumption, as applicable.

(h) [Reserved]

(i) Route air carriers shall note on this schedule all dividends declared in the current period on stocks of investor controlled companies.

(j) Route air carriers shall report on this schedule on a quarterly basis all revenue from airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by section 403(b) of the Federal Aviation Act and Part 223 of the Board's Economic Regulations as well as travel agents, cargo agents and tour conductors traveling at reduced fares (included in Account 3919 on Schedule P-1.1 or P-1.2) and related nonrevenue passenger miles (included in item K160 on Schedule T-1(a)) shall be reported in this schedule on a quarterly basis.

(k) Amounts of adjustments resulting from the physical verification of passenger revenue accounting practices required by section 2-17 shall be reported herein for the quarter in which the adjustment takes place.

(l)-(m) [Reserved]

(n) For capitalized leases the following information shall be disclosed annually as of the close of the calendar year:

(1) Future minimum lease payments as of the date of the balance sheet presented, in the aggregate and for each of the 5 succeeding years, with separate deductions from the total for the amount representing executory costs, including any profit thereon, included in the minimum lease payments and for the amount of the imputed interest necessary to reduce the net minimum lease payments to present value; (2) the total of minimum sublease rentals to be received in the future under noncancelable subleases as of the date of the balance sheet presented; and (3) total contingent rentals actually incurred for the calendar year.

(o) For operating leases the following information shall be disclosed annually as of the close of the calendar year:

(1) Future minimum rental payments required as of the date of the balance sheet presented, in the aggregate and for each of the 5 succeeding years; (2) the total of minimum rentals to be received in the future under noncancelable subleases as of the date of the balance sheet presented; (3) the rental expense for the calendar year with separate amounts for minimum rentals, contingent rentals, and sublease rentals. Rental payments under leases with terms of a month or less that were not renewed need not be included; and (4) a general description of the lessee's leasing arrangements including, but not limited to, the basis on which contingent rental payments are determined; the existence and terms of renewal or purchase options and escalation clauses; and restrictions imposed by lease agreements, such as

those concerning dividends, additional debt, and further leasing. The first two disclosure requirements apply only to operating leases having initial or remaining noncancelable lease terms in excess of 1 year and the last two requirements apply to all operating leases.

(p) Charter air carriers shall note on this schedule the balances in subaccounts 87 and 88.2 of profit and loss account 8100 as reported on the P-1 schedules, together with dividends declared in the current period on the stocks of investor controlled companies.

Schedule P-5.1—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group I air carriers. Group I air carriers that have annual operating revenues of $10 million or more shall file this schedule quarterly. Group I air carriers that have annual operating revenues below $10 million shall file this schedule semiannually.

(b) Subject to the provisions of Section 22(a), quarterly reports are due on May 10, August 10, November 10 and February 10 for the first, second, third and fourth calendar quarters, respectively. Semiannual reports are due on August 10 and February 10.

(c) Each carrier shall indicate in the space provided its full corporate name and an "X" shall be inserted in the appropriate box to indicate whether the data being reported are quarterly or six months data. The period-ending data shall be indicated in the space provided.

(d) Route and charter air carriers subject to the quarterly filing requirement shall file this schedule for each operating entity of the air carrier. Air carriers subject to the semiannual filing requirement shall file this schedule for the overall or system operations of the air carrier.

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate colums of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided. "Aircraft Type" refers to aircraft models such as B-707-100, B-707-200, DC-10-40, Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type.

(f) Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 "Flying Operations (Less Rental)" shall be subdivided as follows:

(i) Line 3 "Pilot and Copilot" expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 "Other" expenses shall include general (hull) insurance, and all other expenses incurred in the inflight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status that are not provided for otherwise on this schedule.

(2) Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

(3) Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

(5) Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

(g) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 "Flight Attendant Expense" shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 "Traffic Related Expense" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 "Departure Related (Station) Expense" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers, and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectable accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

(h) Line 15 "Total Indirect Expense" shall equal the sum of lines 11, 12, 13 and 14.

(i) Line 16 "Total Operating Expense" shall equal the sum of lines 9 and 15.

Schedule P-5.2—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule. "Aircraft Type" refers to aircraft models (such as B-707-100, B-707-300, DC-9-30, etc.) that are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by that air carrier. Aircraft types not generally used in revenue service shall be separately reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(d) Each aircraft type for which a report is being made shall be identified at the head of each column in the space provided. Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word "cargo" shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon request by individual air carriers, or upon the initiative of the Board, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(e) Italicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting, but shall be used for reporting purposes only.

(f) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P-6. The amount reported for this item, in aggregate for all aircraft types, shall agree with the amount reported for the same item reflected on Schedule P-6.

(g) Item 73 "Obsolescence and Deterioration—Expendable Parts" shall reflect (for obsolescence and deterioration of flight equipment expandable parts) the gross provisions for losses in value of expendable parts during the current accounting period offset by any credits applicable to the current period for adjustments for excess inventory levels determined pursuant to section 6-1311.

(h) The total of function 5100 "Flying Operations" reported on this schedule shall agree with corresponding amounts reported on Schedule P-1.2 and the total of item 5278 "Total Direct Maintenance—Flight Equipment" shall agree with the corresponding amount reported in Schedule P-6.

Schedule P-6—Maintenance, Passenger Service, and General Services and Administration Expense Functions

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

(c)—(d) [Reserved]

(e) Group I air carriers shall report the indicated data for all except function 5500 Passenger Service.

(f) Group II and Group III air carriers shall report the indicated data for all except function 6900 General Services and Administration.

(g) Item 79.6 Applied Maintenance Burden-Flight Equipment and 79.8 Applied Maintenance Burden-General Ground Property, respectively, shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 Maintenance Burden between maintenance of flight equipment (by aircraft types) and maintenance of ground property and equipment. Where airframe and aircraft engine overhauls are accounted for on the accrual basis to produce a matching of costs with the operation of aircraft the allocation of maintenance burden shall give effect to charges and credits to profit and loss account 5272 Flight Equipment Airworthiness Provisions in order to effect an equitable allocation of such costs.

(h) The sum of the totals of subfunctions 5200 Direct Maintenance and 5300 Maintenance Burden shall agree with the corresponding amount reported in function 5400 on Schedule P-1. The total of function 6900 General Services and Administration reported in this schedule by Group I air carriers shall agree with the corresponding amount reported on schedule P-1.

Schedule P-7—Aircraft and Traffic Servicing, Promotion and Sales, and General and Administrative Expense Functions

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Group II air carriers and Group III charter carriers shall report the indicated data for all except subfunction 6100 Aircraft Servicing.

(d) Group III air carriers shall report the indicated data for subfunction 6100 Aircraft Servicing and function 6800 General and Administrative and shall disregard the data indicated for functions 6400 Aircraft and Traffic Servicing and 6700 Promotion and Sales.

Schedule P-8—Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions

(a) This schedule shall be filed by each Group III air carrier only.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) The sum of the totals reported in this schedule for subfunctions 6200 Traffic Servicing and 6300 Servicing Administration, together with 6100 Aircraft Servicing in Schedule P-7 shall agree with the corresponding amount reported for function 6400 Aircraft and Traffic Serving in Schedule P-1.2. The sum of the totals reported in subfunctions 6500 Reservations and Sales and 6600 Advertising and Publicity shall agree with the corresponding amount reported for function 6700 Promotion and Sales in Schedule P-1.2.

Schedule P-10—Employment Statistics by Labor Category

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Separate sets of this schedule shall be filed for each operating entity of the air carrier. Employees will be allocated to the reporting entities on a basis consistent with that used in the allocation of salaries for Form 41 financial reporting purposes.

(c) Column 3, "Number of Employees," shall reflect, for each category in column 1, the weighted average number of full-time employees who received pay for any part of the calendar year. In determining the weighted average, all temporary or part-time employees shall be restated, based on their hours paid, as an equivalent number of full-time employees. The calculation shall be based on a standard full-time 2,080/hour year with overtime hours excluded from the computation.

(d) Labor category description—"Other personnel" shall include all employees whose salary is chargeable to accounts 30, 32, 34 and 35 in this Uniform System of Accounts and Reports.

(e) Labor category description—"Transport-related" shall include all employees whose salary is not chargeable to one of the various salary accounts contained in the Uniform System of Accounts and Reports. For example, this category would include those employees who work in transport-related operations and other activities for which a separate payroll account is not prescribed. The number of employees reported as transport-related shall be calculated in accordance with paragraph (c) of these reporting instructions.

Schedule P-12(a)—Fuel Consumption by Type of Service and Entity

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) A single copy (original only) of this schedule shall be filed to report monthly fuel consumption data by type of service and entity.

(c) For the purposes of this schedule, type of service shall be either scheduled service or nonscheduled service as those terms are defined in section 03 of Part 241.

(d) For the purpose of this schedule, scheduled service shall be reported separately for: (1) Intra-Alaskan operations; (2) domestic operations, which shall include all operations within and between the 50 States of the United States (except Intra-Alaska), the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands and Canadian transborder operations; (3) Atlantic operations (excluding Bermuda); (4) Pacific operations which shall include the North/Central Pacific, South Pacific (including Australia) and the Trust Territories; and (5) Latin American operations which shall include the Caribbean (including Bermuda and the Guianas), Mexico and South/Central America.

(e) For the purpose of this schedule, nonscheduled service shall be reported separately for domestic operations and international operations as defined in paragraph (d) above, except that domestic and international MAC operations shall be reported on separate lines.

(f) The cost data reported on each line shall represent the average cost of fuel, as determined at the station level, consumed in that entity.

(g) The cost of fuel shall include shrinkage but exclude (1) "throughput" and "in to plane" fees, *i.e.,* service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a separately identifiable form and (2) nonrefundable Federal and State excise taxes. However, "through-put" and "in to plane" charges that cannot be identified or segregated from the cost of fuel shall remain a part of the cost of fuel as reported on this schedule.

(h) Each air carrier shall maintain records for each station showing the computation of fuel inventories and consumption for each fuel type. The periodic average cost method shall be used in computing fuel inventories and consumption. Under this method, an average unit cost for each fuel type shall be computed by dividing the total cost of fuel available (Beginning Inventory plus Purchases) by the total gallons available. The resulting unit cost shall then be used to determine the ending inventory and the total consumption costs to be reported on this schedule.

(i) Where amounts reported for a specific entity include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in amounts reported for that entity.

(j) Where any adjustment(s) recorded on the books of the carrier results in a material distortion of the current month's schedule, carriers shall file a revised schedule P-12(a) for the month(s) affected.

(k) Data reported on this schedule shall be withheld from public release until the quarterly Form 41 P schedules for the calendar quarter to which the monthly schedules relate are due at the Board. However, aggregate data may be released before that time without identifying individual carriers. Provisions governing the due dates for submitting the quarterly P schedules are contained in paragraphs (a) and (b) of section 22 of this part. Individual carrier fuel data withheld from public disclosure may be disclosed by the Board to (1) parties to any proceeding before the Board to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board; (2) agencies and other components of the Federal Government for their internal use only; and (3) such persons and in such circumstances as the Board determines to be in the public interest or consistent with its regulatory functions and responsibilities.

(Approved by the Office of Management and Budget under control number 3024-0013)

[ER-755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For Federal Register to section 24 of Part 241, see the List of CFR Sections Affected in the Finding Aids section of this volume.

TRAFFIC AND CORPORATE REPORTING REQUIREMENTS

Section 25—Traffic and Capacity Elements

General instructions. (a) All prescribed reporting for traffic and capacity elements shall conform with the data compilation practices and standards set forth in section 19—Uniform Classification of Operating Statistics. Additional codes are provided herein for elements to be reported on the T schedules which are derived from data prescribed in section 19.

(b) Schedules T-1, T-2, and T-3 shall be in a form prescribed by the Board or in the form of approved machine listings. The same information reported in Schedule T-1 shall also be submitted on magnetic tape or punched cards at the time the hardcopy schedules are submitted; however, those air carriers not having access to automatic data processing equipment shall submit only hardcopy reports to the Board.

Schedule T-1(a)—Traffic and Capacity Statistics by Class of Service

Schedule T-1(b)—Traffic and Capacity Statistics by Class of Service—Scheduled Services

Schedule T-1(c)—Traffic and Capacity Statistics by Class of Service—Nonscheduled Services

(a) Schedule T-1 shall be filed monthly as follows:

Schedule No.	Applicability
T-1(a)	All air carriers.
T-1(b)	All Group II and Group III air carriers.

Schedule No.	Applicability
T-1(c)	All Group II and Group III air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(d) A description of each item shall be given in the left margin, and separate columns shall be used to present the codes and data as applicable for each classification of service prescribed in section 19-4, namely, Scheduled Cargo Service, Nonscheduled Civilian Passenger-Cargo Service, Nonscheduled Military Passenger-Cargo Service, Nonscheduled Civilian Cargo Service, Nonscheduled Military Cargo Service and All Services. In addition, columns are provided for total scheduled and total nonscheduled services. Nonscheduled Military Passenger-Cargo Service and Nonscheduled Military Cargo Service shall be reported by aircraft type. Each aircraft type reported shall be identified at the head of each column in the space provided. "Aircraft Type" refers to aircraft models such as B-707-100, B-707-200, DC-10-40, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. The schedule shall include the following items:

Code	Elements
X110	Revenue passenger enplaned.
X140	Revenue passenger-miles.
X141	First class.
X142	Coach.
X160	Nonrevenue passenger-miles.
X240	Revenue ton-miles.
X241	Passenger
X243	U.S. mail-priority.
X244	U.S. mail-nonpriority.
X245	Foreign mail.
X247	Freight.
X260	Nonrevenue ton-miles.
X280	Available ton-miles.
X320	Available seat-miles.
X321	First class.
X322	Coach.
X410	Revenue aircraft miles flown.
X430	Revenue aircraft miles scheduled.
X431	Scheduled aircraft miles completed.
X510	Revenue aircraft departures performed.
X610	Revenue aircraft hours (airborne).
X620	Nonrevenue aircraft hours (airborne).
XXXX	Revenue aircraft hours (ramp-to-ramp).

Schedule T-2—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

(a) This schedule shall be filed quarterly by all carrier groups.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

SCHEDULED SERVICES

Code	Elements
	Revenue Passenger-Miles (000).
A140,E141	First Class and Mixed First Class Passenger-Cargo.
C140,E142	Coach and Mixed Coach Passenger-Cargo.
G140	Cargo.
K140	Total.
	Available Seat-Miles (000).
A320,E321	First Class and Mixed First Class Pas-

SCHEDULED SERVICES—Continued

Code	Elements
	senger-Cargo.
C320,E322	Coach and Mixed Coach Passenger-Cargo.
G320	Cargo.
K320	Total.
K240	Revenue Ton-Miles.
K280	Available Ton-Miles.
	Revenue Aircraft Miles Flown.
A,C,E410	Passenger-Cargo.
G410	Cargo.
K410	Total.
	ALL SERVICES
Z140	Revenue Passenger-Miles (000).
Z320	Available Seat-Miles (000).
Z240	Revenue Ton-Miles.
Z280	Available Ton-Miles.
Z410	Revenue Aircraft Miles Flown.
	AIRCRAFT HOURS FLOWN
Z610	Revenue Aircraft Hours (airborne).
Z620	Nonrevenue Aircraft Hours (airborne).
Z650	Total Aircraft Hours (airborne).
	MISCELLANEOUS OPERATING FACTORS
Z810	Aircraft Days Assigned to Service-Carrier's Equipment.
Z820	Aircraft Days Assigned to Service-Carrier's Routes.
Z420	Nonrevenue Aircraft Miles Flown.
Z830	Carrier's Interchange Equipment-Hours on Others (airborne).
Z630	Aircraft Hours (ramp-to-ramp).
Z921	Aircraft Fuels Issued (gallons).
Z922	Aircraft Oils Issued (gallons).

Schedule T-3(a)—Airport Activity Statistics—Scheduled Revenue Service

Schedule T-3(b)—Airport Activity Statistics—Scheduled Revenue Service

Schedule T-3(c)—Airport Activity Statistics—Nonscheduled Revenue Service

(a) Schedule T-3 shall be filed quarterly as follows:

Schedule No.	Applicability
T-3(a)	All air carriers.
T-3(b)	All air carriers.
T-3(c)	All air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(d) Data shall be reported and listed in alphabetical sequence for each airport at which a carrier has conducted either scheduled service or charter operations during the report period. However, data applicable to international airports that are served only on a charter basis may be grouped and reported in total following the listing of individual airports. The schedule shall include the following items:

Item	Scheduled service	Nonscheduled service
Airport code		
Revenue aircraft departures scheduled	K520	
Scheduled revenue departures completed	K521	
Revenue aircraft departures performed total by aircraft type	K510	V510
Revenue passengers enplaned	K110	V110
Revenue cargo tons enplaned:		
U.S. mail-priority	K213	V213
U.S. mail-nonpriority	K214	V214
Foreign mail	K215	V215
Freight	K217	V217

(e) Where data are required to be reported by aircraft type, separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes in the *Manual of ADP Instructions, Outputs, Codes and Related Material,* which is available from the Board's Information Management Division. For each reported aircraft type, carriers shall also insert at the head of each column the four digit "Aircraft Code" which is prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type.

Schedule T-7—Statistical Market Report

(a) This schedule shall be filed by all all Group III route air carriers conducting operations set forth in paragraph (c) below.

(b) Data reflected on this schedule shall be supplements to the related entity report in which the data are included.

(c) Markets to be reported are:

Mainland-Hawaii.

Mainland-Alaska.
Mainland-Puerto Rico.
Mainland-Bermuda.
Mainland-Bahamas.
Mainland-Mexico.
Hawaii-Alaska.

and such other markets as may be designated by the Board.

Schedule T-8—Report of all-cargo operations.

(a) This schedule shall be filed annually by all air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued under section 418 of the Act.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) *Statement of operations.* This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(d) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.

Schedule T-9—Nonstop Market Report

(a) This schedule shall be filed monthly by all Group I and Group II air carriers providing scheduled service and may be used, with the approval of the Board's Comptroller, by new entrants and others without Automatic Data Processing capability that would otherwise be required to comply with the requirements of Section 19-3.

(b) This schedule shall be withheld from public disclosure only as provided in section 19-6.

(c) Each schedule contains a five block carrier code and a four block date code. The five block carrier code is assigned to individual carriers by the Office of Comptroller. The four block date code will be used to record the year and the month. The first two blocks of the date code shall be used to record the year and the second two blocks shall be used to record the month in the calendar year. Months will be numbered consecutively beginning with 01 for January and continuing through 12 for December.

(d) Separate sheets of this schedule shall be filed for each operational entity and individual flight stages shall be reported on separate lines. Where different aircraft types are used, separate lines will be used for those flight stages.

(e) In column 1, carriers shall report the line number as a point of reference for the data reported.

(f) In columns 2 and 3, respectively, carriers shall report the takeoff and landing for each flight stage. Carriers shall use the three-letter airport codes in the "Official Airline Guide" (OAG). If the OAG contains no three-letter code for a point served by the carrier, a three-letter code will be provided by the Civil Aeronautics Board's Data Systems Management Division upon request.

(g) In column 4, carriers shall disclose the aircraft type used in accordance with four-digit codes established in the *Manuual of ADP Instructions, Outputs, Codes, and Related Material,* which is available from the Board's Information Management Division.

(h) In column 5, "Interairport Distance," carriers shall report the great circle distance, in statute miles, as maintained and made available by the Civil Aeronautics Board's Schedules and Route Information Unit, Records Services Section (See Part 247 of the Economic Regulations).

(i) In column 6, "Revenue Aircraft Departures Performed," carriers shall report the number of revenue aircraft departures (take offs) performed (scheduled and extra sections).

(j) In columns 7 and 8, respectively, carriers shall report the actual number of First Class and Coach, "Seats Available" on the particular aircraft with which each flight stage is performed.

(k) In column 9, "Minutes (Ramp-to-Ramp)," carriers shall report the ramp-to-ramp minutes for each flight stage.

(l) In column 10, "Tons Available," carriers shall report in pounds the payload capacity actually provided by the particular aircraft with which each flight stage is performed.

(m) In columns 11 and 12, respectively, carriers shall report the number of First Class and Coach "Revenue Passengers Transported" on each flight stage.

(n) In column 13, "Revenue Tons Transported," carriers shall report the number of pounds of revenue traffic carried on each flight stage. Transported passengers should be included at a rate of 200 pounds per passenger.

(o) In columns 14 and 15, respectively, carriers shall report the number of First Class and Coach "Revenue Passengers Enplaned" at the take-off point.

(p) In column 16, "Revenue Cargo Tons Enplaned," carriers shall report the total of revenue cargo pounds boarding an aircraft.

(Approved by the Office of Management and Budget under control number 3024-0013)

[ER-755, 37 FR 19726, Sept. 21, 1972]

Editorial Note: For Federal Register to section 25 of Part 241, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Section 26—General Corporate Elements

Schedule G-41—Persons Holding More than 5 Per Centum of Respondent's Capital Stock or Capital

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Columns 1 and 2 shall reflect the names and addresses of all person who hold, as of the end of any month of the year, more than five (5) per centum of the issued and outstanding capital stock or, in the case of an unincorporated business enterprise, more than five (5) per centum of the total invested capital of the reporting carriers.

(c) Column 3, "Held for Own Account" shall reflect by either of the words "yes" or "no", whether or not the interest is held for the account of the person named in column 1. In cases where the answer is "no," the name and address of the persons for whose account the interest is held shall be indicated by footnotes.

(d) Columns 4 through 7 shall pertain to the capital stock or the invested capital (exceeding 5 percent) held by the persons named in column 1. Column 4 shall reflect the class(es) of those shares held; column 5 shall reflect the maximum number of shares of each class of stock or the maximum amount of invested capital held as of the end of any month of the year; column 6 shall reflect the percent of total outstanding capital which such maximum shares or maximum invested capital represent; and column 7 shall reflect the number of such shares or amount of invested capital held at year end.

[ER-1297, 47 FR 32926, July 30, 1982, as amended by ER-1401, 50 FR 253, Jan. 3, 1985]

PART 247—DIRECT AIRPORT-TO-AIRPORT MILEAGE RECORDS

§ 247.1 Official mileage record of the Board.

The direct airport-to-airport mileage record now maintained, and as hereafter amended or revised from time to time by the Records Services Section of the Office of Facilities and Operations of the Civil Aeronautics Board in the regular performance of its duties, is hereby adopted as the official mileage record of the Board and the mileages set forth therein shall be used in all instances where it shall be necessary to determine direct airport-to-airport mileages pursuant to the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Board pursuant thereto.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324); Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

[ER-834, 38 FR 34462, Dec. 14, 1973]

PART 248—SUBMISSION OF AUDIT REPORTS

Sec.
248.1 Applicability.
248.2 Filing of audit reports.
248.4 Time for filing reports.
248.5 Withholding from public disclosure.

AUTHORITY: Secs. 204, 401, 407, Pub. L. 85-7 26, as amended, 72 Stat. 743, 754, 766; 49 U.S.C. 1324, 1371, 1377.

SOURCE: ER-420, 29 FR 13799, Oct. 7, 1964, unless otherwise noted.

§ 248.1 Applicability.

The requirements of this part shall be applicable to all air carriers subject to the requirements of Part 241 of this subchapter.

§ 248.2 Filing of audit reports.

(a) Whenever any air carrier subject to § 248.1 shall have caused an annual audit of its books, records, and accounts to be made by independent public accountants, such air carrier shall file with the Board's Office of the Comptroller, in duplicate, a special report consisting of a true and complete copy of the audit report submitted by such independent public accountants, including all schedules, exhibits, and certificates included in, attached to, or submitted with or separately as a part of, the audit report.

(b) Each air carrier subject to § 248.1 that does not cause an annual audit to be made of its books, records, and accounts for any fiscal year shall, at the close of such fiscal year file with the Board's Office of the Comptroller, as a part of its periodic reports, a statement that no such audit has been performed.

(Approved by the Office of Management and Budget under control number 3024-0004)

[ER-1351, 48 FR 32756, July 19, 1983, as amended by ER-1362, 48 FR 46265, Oct. 12, 1983]

§ 248.4 Time for filing reports.

The report required by this part shall be filed with the Board's Office of Comptroller within 15 days after the due date of the appropriate periodic CAB Form 41 Report, filed for the 12-month period covered by the audit report, or the date the accountant submits its audit report to the air carrier, whichever is later.

[ER-1351, 48 FR 32756, July 19, 1983]

§ 248.5 Withholding from public disclosure.

The special reports required to be filed by § 248.2 shall be withheld from public disclosure, until further order of the Board, if such treatment is requested by the air carrier at the time of filing.

PART 249—PRESERVATION OF AIR CARRIER RECORDS

Subpart A—General Instructions

Sec.
249.1 Applicability.
249.2 Definitions.
249.3 Preservation of records.
249.4 Photographic copies.
249.5 Storage of records.
249.6 Destruction of records.
249.7 Restrictions on record destruction.
249.8 Premature loss or destruction of records.
249.9 Carriers going out of business.
249.10 Waiver of requirements.

Subpart B—Preservation of Records by Carrier

249.20 Preservation of records by certificated air carriers.
249.21 Preservation of records by public charter operators and overseas military personnel charter operators.

Subpart C—Regulations Relating to the Truth-in-Lending Act

249.30 Applicability.
249.31 Preservation and inspection of evidence of compliance.

AUTHORITY: Secs. 101(3), 204, 401, 402, 403, 404, 407, 411, 416, 418, 1002, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 757, 758, 760, 766, 769, 771, 788; 91 Stat. 1284; (49 U.S.C. 1301(3), 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1388, 1482).

SOURCE: ER-1214, 46 FR 25415, May 6, 1981, unless otherwise noted.

NOTE: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 3024-0006.

Subpart A—General Instructions

§ 249.1 Applicability.

Subparts A and B of this part apply to:

(a) Air carriers, as defined in section 101(3) of the Act, that hold either certificates of public convenience and necessity or certificates for all-cargo air service.

(b) Public charter operators, as defined in Part 380 of this chapter.

(c) Overseas military personnel charter operators, as defined in Part 372 of this chapter.

§ 249.2 Definitions.

For the purposes of this part:

"Authorized representatives of the Board" means any persons, including special agents and auditors, designated by the Board to perform inspections, audits, or examinations within the purview of the Board's authority.

"Certificated air carrier" means the holder of a certificate of public convenience and necessity issued by the Civil Aeronautics Board under section 401 of the Act or a certificate for all-cargo air service issued by the Civil Aeronautics Board under section 418 of the Act.

"Final adjudication" means the expiration date of the last possible period of review or reconsideration of a given case, by the Board or by a court, that is provided by applicable statute or regulation.

"Open mail rate period" means the time interval between the date of institution of a new mail rate proceeding or the start of service over a new route for which no mail rate has previously been fixed, and the date upon which a Board order setting the final mail rate becomes legally effective.

"Pending case" means any case that the Board is empowered to hear before its final adjudication.

"Records" include all documents that are related to, or constitute integral links in developing the history of, or facts regarding, financial transactions or physical operations of a particular segment, operating division, or entire system of the carrier's operations. The term includes any copy of initially prepared documents which bear approvals, comments, or notations which were added and are of significance to a full explanation of recorded facts or information. The term "records" means not only accounting records in a limited technical sense but all other evidentiary accounts of events such as memoranda, correspondence, working sheets, tabulating equipment listings punched cards, computer-produced listings, microfilm, and magnetic storage media (*i.e.*, magnetic tapes, disks). The term "records" also means microform and/or tape reproductions of documents made as authorized by this subpart. In addition, the term "records" includes any of the above-described materials coming into the possession of the air carrier through merger, consolidation, succession, transfer, or other acquisition.

"Supporting papers (records)" means any group of documentary papers, such as memoranda, correspondence, working sheets, etc., that assist in upholding the accuracy or clarity of related records.

§ 249.3 Preservation of records.

(a) All records listed in §§ 249.20 and 249.21 may be preserved on either paper or nonerasable microfilm (see § 249.4). However, a paper or microfilm record need not be created to satisfy the requirements of this part if the record is initially prepared in a machine-readable medium such as punched cards, magnetic tapes, and disks. The records maintained in machine-readable media and the underlying data used in their preparation shall be preserved for the periods prescribed in §§ 249.20 and 249.21. A paper or microfilm record shall not be destroyed after transfer to a machine-readable medium before expiration of the prescribed period: however, a waiver permitting the early destruction of paper or microfilm records transferred to a machine-readable medium may be granted by the Chief, Data Requirements Division, Office of the Comptroller, when it is demonstrated by the requesting carrier that the substantive purpose of the retention requirement will be met by retention of the information in machine-readable form (see § 249.10).

(b) Each record kept in a machine-readable medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it is complete and accurate. This statement shall be executed by a person having personal knowledge of the facts contained in the records. The records shall be indexed and retained in such a manner so that they are easily accessible, and the carrier shall have the facilities available to locate, identify and reproduce the records in readable form without loss of clarity. Authorized representatives of the Board shall be given immediate access to the carrier's facilities upon request.

(c) If any record which must be retained under the provisions of §§ 249.20 and 249.21 is included as an exhibit to another document which must also be retained, the carrier need only keep in its files one copy of the record to satisfy these record retention requirements. In these cases, the carrier shall establish adequate cross-references to assist in locating the record.

(d) The provisions in this part do not excuse noncompliance with requirements of any other governmental body, Federal or State, prescribing longer retention periods for any records.

§ 249.4 Photographic copies.

(a) Any record may be transferred to nonerasable microfilm (including microfiche, computer output microfilm, and aperture cards) at any time. Records so maintained on microfilm shall satisfy the minimum requirements listed in paragraphs (b) through (f) of this section.

(b) The microfilm shall be of a quality that can be easily read and that can be reproduced in paper similar in size to an original without loss of clarity or detail during the periods the records are required to be retained in §§ 249.20 and 249.21.

(c) Microfilm records shall be indexed and retained in such a manner as will render them readily accessible, and the company shall have facilities available to locate, identify and read the microfilm and reproduce in paper form. Authorized representatives of the Board shall be given immediate access to these facilities upon request.

(d) Any significant characteristic, feature, or other attribute which microfilm will not preserve shall be clearly indicated at the beginning of each roll of film or series of microfilm records if applicable to all records on the roll or series, or on the individual record, as appropriate.

(e) The printed side of printed forms need not be microfilmed for each record if nothing has been added to the printed matter common to all such forms, but an identified specimen of the form shall be on the film for reference.

(f) Each roll of film or series of microfilm records shall include a microfilm of a certificate stating that the photographs are direct and facsimile reproductions of the original records and they have been made in accordance with prescribed regulations. Such a certificate shall be executed by a person having personal knowledge of these facts. Where the microfilm is computer output, the microfilm certificate shall state that the information is complete and accurate.

§ 249.5 Storage of records.

Each carrier shall provide reasonable protection from damage by fire, floods, and other hazards for records subject to the provisions of this part.

§ 249.6 Destruction of records.

(a) Upon the expiration of the period of preservation prescribed in this regulation, records may be destroyed at the option of the carrier.

(b) Unless otherwise specified, duplicate copies of records may be destroyed at any time if they contain no significant information not shown on the originals.

§ 249.7 Restrictions on record destruction.

(a) Each carrier that has been named a party to a pending case arising under section 406 of the Act shall retain all records remaining in its custody as of the beginning of an "open mail rate period" until the occurrence of one of the following contingencies, whichever is first:

(1) Final adjudication of a Board order fixing the final mail compensation payable for services rendered during an "open mail rate period."

(2) Receipt of a notice issued by the Chief, Data Requirements Division, Office of Comptroller, in response to a written application filed by the carrier, authorizing the destruction of specifically identified categories of records. An application should be filed when the carrier believes that certain categories of records are not relevant to the proper processing of a pending mail proceeding. The application should list those categories of records which the carrier wants to destroy and its reasons for believing that the records are not necessary or useful in determining its satutory mail pay.

(b) Each carrier shall preserve records supporting the computation of subsidy mail pay in accordance with the provisions of § 249.20 unless the carrier has been advised that these computations are subject to further review and disposition by the Board. When the Board is still reviewing the compensation amount after expiration of the normal retention period specified in § 249.20, these records must be retained until the carrier is notified by the Chief, Data Requirements Division, Office of Comptroller, that the records may be destroyed.

(c) Each carrier that has been named a party to an enforcement proceeding or against whom a third-party complaint has been filed shall retain all records relating to the case until the receipt of formal notification from the Chief, Data Requirements Division, Office of Comptroller, following a written application from the carrier, which authorizes the destruction of these records.

(d) Each carrier that has been named a party to a pending case which is not of a type discussed in paragraphs (a), (b), and (c) of this section, shall preserve all records according to the provisions of § 249.20 unless the Chief, Data Requirements Division, Office of Comptroller, notifies the carrier in writing that specific records shall be preserved until final adjudication of the pending case.

(e) Each carrier that is a party to litigation in a Federal court of which the Board is also a party shall retain all records relating to the case until the receipt of formal notification from the Chief, Data Requirements Division, Office of Comptroller, following a written application from the carrier, which authorizes the destruction of these records.

§ 249.8 Premature loss or destruction of records.

If records are destroyed or lost before the expiration of the prescribed retention period, a statement shall be prepared and submitted to the Chief, Data Requirements Division, Office of Comptroller, which lists, as accurately as possible, the unavailable records and describes the circumstances under which they became unavailable.

§ 249.9 Carriers going out of business.

The records referred to in these regulations may be destroyed after the business is discontinued and the carrier is completely liquidated. The records may not be destroyed until dissolution is final and all transactions and litigations are completed. When a carrier is merged with another company which is regulated by the Board, the successor company shall preserve records of the merged company in accordance with these regulations.

§ 249.10 Waiver of requirements.

A waiver from any provision of this regulation may be made by the Chief, Data Requirements Division, Office of Comptroller, upon the Chief's own initiative or upon submission of a written request by a carrier or group of carriers. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with the prescribed requirements would impose an unreasonable burden on the carrier, and that granting the waiver would be in the public interest.

Subpart B—Preservation of Records by Carrier

§ 249.20 Preservation of records by certificated air carriers.

Each certificated air carrier shall retain its records according to the provisions of this section. Unless otherwise specified in the "Schedule of Records," each retention period shall begin on the date when the records are created or otherwise come into the possession of the carrier.

SCHEDULE OF RECORDS

[See footnotes at end of table]

Category of records	Retention period
1. General and subsidiary ledgers or their equivalents:	
(a) General ledgers; subsidiary or auxiliary ledgers	3 years.
(b) Indexes to general and subsidiary ledgers	Do.
2. Journals and journal vouchers:	
(a) General and subsidiary journals, and journal vouchers	3 years.
(b) Papers forming a part of, or necessary to explain, journal entries; entry numbers	Do.
3. Voucher distribution registers or their equivalent	Do.
4. Accounts receivables and payables:	
(a) Traffic accounts receivable or payable, detailed journals and ledgers or their equivalents, together with supporting papers.	Do.
(b) General accounts receivable or payable, detailed journals and ledgers or their equivalents, together with supporting papers.	Do.
(c) Copies of invoices issued by the carrier which have been settled and all supporting papers	1 year.
(d) Copies of Postal Service Forms: Weekly Summary of Airmail Dispatch (No. 2729) and POD Airmail Exemption Record (No. 2734) supporting mail pay claims which have been settled.	30 days.
5. Subsidy records:	
(a) For each calendar year, all monthly records of operations, such as tabulations and summaries of miles flown and passenger-miles flown, pertaining to or part of operational records relevent to computation of subsidy mail pay.	3 years.
(b) For each calendar year, all basic original documents, such as pilots' flight logs and passenger lists relevant to a determination of the validity of a carrier's operations described in item (a) above.	Do.
6. The papers, records, or other evidence supporting financial and statistical reports to the CAB. These should include among others the following specific records: Internal administrative or operating reports; system reports of aircraft movements by trip number, showing arrivals, departures, flight delays and related information; bonds and other long-term debt records; stock records; corporate organization records; financial data in support of subsidy claims; minutes of meetings; carrier internal reports on internal controls and other internal audits and procedural studies; operational, management, accounting, financial, and legal service contracts and agreements; records and agreements relating to the lease or purchase and sale of company assets, including title papers, deeds, and similar records; insurance records; property and equipment records; tax records; accountants' and auditors' reports; records of receipts and disbursements including bank statements, check registers and cancelled checks; payroll registers of salaries and wages paid; cost accounting records for work orders; inventories of materials and supplies; and other source documents.	Do.
7. Funds reports and estimates of funds	1 year.

SCHEDULE OF RECORDS—Continued

[See footnotes at end of table]

Category of records	Retention period
8. Consumer complaints:	3 years.
(a) Initial correspondence and record of action taken	
(b) Initial trip reports:	
(1) Traffic Data: Basic documents showing the number of passengers, and pounds of mail and property carried.	[1].
(c) Reservations reports and records:	2 months.
(1) Cards and charts constituting original source of passengers' names, telephone numbers, etc	1 month.
(2) Telegrams and radio messages relating to the clearance of space, passenger dispatching, etc	3 years.
(d) System report of airplane movements by trip number showing arrivals, departures, delays and related information.	
(e) Sales reports:	2 years.
(1) Sales ticket or other similar reports from stations, offices and agents	1 year.
(f) Auditors' coupons	Do.
(g) Air waybills	Do.
(h) Flight coupons	Do.
(i) Ticket refund claims records and reports	Do.
(j) Records and reports relating to errors, oversales, irregularities and delays in handling passengers	2 years.
9. All documents which relate to the furnishing of transportation to candidates for political office or persons acting on their behalf which are required to be maintained following § 374a.7 of the subchapter.	3 years.
10. Correspondence and working papers relating to rate and route proceedings	

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[1] One year-mail-property; 2 years-passengers.

§ 249.21 Preservation of records by public charter operators and overseas military personnel charter operators.

Each operator authorized under Parts 372 and 380 of this chapter shall retain the following records for 6 months after completion or cancellation of the flight or series of flights. The records shall be made available upon request of an authorized representative of the Board.

(a) All receipts and statements of travel agents and all other documents which show deposits made by each charter participant or which show refunds to charter participants.

(b) All receipts and statements of travel agents and all other documents which show or reflect commissions received, paid to, or deducted by travel agents in connection with the flight or series of flights.

(c) All statements, invoices, bills, and receipts from suppliers for furnishing of goods or services in connection with the tour or series of tours.

(d) All customer reservations records for each flight.

(e) All contracts with individual tour participants.

(f) All bank statements and reconciliations for escrow bank accounts opened and maintained in accordance with Board regulations.

Subpart C—Regulations Relating to the Truth-in-Lending Act

§ 249.30 Applicability.

This subpart is applicable to all air carriers and foreign air carriers as defined in section 101 of the Federal Aviation Act of 1958, including, without limitation, direct carriers, air taxi operators registered under Part 298 of this chapter, indirect air carriers registered under Part 296 of this chapter, charter operators authorized under Parts 372 and 380 of this chapter, and foreign air carriers holding permits to engage in indirect foreign air transportation issued under section 402 of the Act.

§ 249.31 Preservation and inspection of evidence of compliance.

Air carriers and foreign air carriers shall preserve evidence of compliance with the requirements imposed under Regulation Z of the Board of Governors of the Federal Reserve System (12 CFR Part 226), implementing the provisions of Title I (Truth in Lending) and Title V (General Provisions) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*) other than the advertising requirements under § 226.10 of regulation Z. This evidence shall be preserved for no less than 2 years after the date each disclosure is required to be made and shall be made available for inspection by authorized representatives of the Board.

PART 250—OVERSALES

Sec.
250.1 Definitions.
250.2 Applicability.
250.2a Policy regarding denied boarding.
250.2b Carriers to request volunteers for denied boarding.
250.3 Boarding priority rules.
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250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.
250.6 Exceptions to eligibility for denied boarding compensation.
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250.8 Denied boarding compensation.
250.9 Written explanation of denied boarding compensation and boarding priorities.
250.10 Reports of unaccommodated passengers.
250.11 Public disclosure of deliberate overbooking and boarding procedures.

AUTHORITY: Secs. 204, 401, 402, 404, 407, 411, 416, 1002, of Pub. L. 85-726, as amended, 72 Stat. 743, 754, 757, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1482.

SOURCE: ER-1306, 47 FR 52985, Nov. 24, 1982, unless otherwise noted.

§ 250.1 Definitions.

"Airport" means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area, provided that transportation to the other airport is accepted (i.e., used) by the passenger.

"Carrier" means (a) a direct air carrier, except a helicopter operator, holding a certificate issued by the Board pursuant to sections 401(d)(1), 401(d)(2), 401(d)(5), or 401(d)(8) of the Act, or an exemption from section 401(a) of the Act, authorizing the transportation of persons, or (b) a foreign route air carrier holding a permit issued by the Board pursuant to section 402 of the Act, or an exemption from section 402 of the Act, authorizing the scheduled foreign air transportation or persons.

"Comparable air transportation" means transportation provided to passengers at no extra cost by a carrier as defined above.

"Confirmed reserved space", means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefor by the carrier, as being reserved for the accommodation of the passenger.

"Large aircraft" means any aircraft that has a passenger capacity of more than 60 seats.

"Stopover" means a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the final destination.

"Sum of the values of the remaining flight coupons" means the sum of the applicable one-way fares, including any surcharges and air transportation taxes, less any applicable discounts.

[ER-1306, 47 FR 52985, Nov. 24, 1982, as amended by ER-1337, 48 FR 29680, June 28, 1983]

§ 250.2 Applicability.

This part applies to every carrier, as defined in § 250.1, with respect to flight segments with large aircraft in (1) interstate or overseas air transportation and (2) foreign air transportation originating at a point within the United States.

§ 250.2a Policy regarding denied boarding.

In the event of an oversold flight, every carrier shall ensure that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily.

§ 250.2b Carriers to request volunteers for denied boarding.

(a) In the event of an oversold flight, every carrier shall request volunteers for denied boarding before using any other boarding priority. A "volunteer" is a person who responds to the carrier's request for volunteers and who willingly accepts the carriers' offer of compensation, in any amount, in exchange for relinquishing the confirmed reserved space. Any other passenger denied boarding is considered for purposes of this part to have been denied boarding involuntarily, even if that passenger accepts the denied boarding compensation.

(b) If an insufficient number of volunteers come forward, the carrier may deny boarding to other passengers in accordance with its boarding priority rules. However, the carrier may not deny boarding to any passenger involuntarily who was earlier asked to volunteer without having been informed about the danger of being denied boarding involuntarily and the amount of Board-mandated compensation.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.3 Boarding priority rules.

(a) Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight in the event that an insufficient number of volunteers come forward. Such rules and criteria shall reflect the obligations of the carrier set forth in §§ 250.2a and 250.2b to minimize involuntary denied boarding and to request volunteers, and shall be written in such manner as to be understandable and meaningful to the average passenger. Such rules and criteria shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever.

[ER-1306, 47 FR 52985, Nov. 24, 1982, as amended by ER-1337, 48 FR 29680, June 28, 1983]

§ 250.4 Denied boarding compensation tariffs for foreign air transportation.

(a) Every carrier operating flights in foreign air transportation departing from the United States shall file tariffs governing such transportation that provide compensation for passengers holding confirmed reserved space who are denied boarding involuntarily from an oversold flight that departs without those passengers. The tariffs shall incorporate the amount of compensation described in § 250.5 and the exceptions to eligibility for compensation described in § 250.6. Carriers subject to this section that offer free or reduced rate air transportation in lieu of the cash payment as provided in § 250.5(b) shall file a tariff stating that acceptance by the passenger of the alternative compensation is voluntary and that the value of the transportation benefit offered is equal to or greater than the cash payment otherwise required.

(b) The tariffs shall specify that the carrier will tender the appropriate compensation on the day and the place the involuntary denied boarding occurs.

(c) A carrier that does not provide the protections of this part on its inbound foreign flights may not file tariffs with the Board concerning its oversales practices for those flights.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

(a) Subject to the exceptions provided in § 250.6, a carrier as defined in § 250.1, shall pay compensation to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons up to the passenger's next stopover, or if none, to the passenger's final destination, with a maximum of $400. However, the compensation shall be one-half the amount described above, with a $200 maximum, if the carrier arranges for comparable air transporation, or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover or if none, at the airport of the passenger's destination, not later than 2 hours after the time the direct or connecting flight on which confirmed space is held is planned to arrive in the case of interstate and overseas air transportaion, or 4 hours after such time in the case of foreign air transportation.

(b) Carriers may offer free or reduced rate air transportation in lieu of the cash due under paragraph (a) of this section, if (1) the value of the transportation benefit offered is equal to or greater than the cash payment otherwise required, and (2) the carrier informs the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.6 Exceptions to eligibility for denied boarding compensation.

A passenger denied boarding involuntarily from an oversold flight shall not be eligible for denied boarding compensation if:

(a) The passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation;

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons;

(c) The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund; or

(d) The carrier arranges comparable air transportation, or other transportation used by the passenger at no extra cost to the passenger, that at the time such arrangements are made is planned to arrive at the airport of the passenger's next stopover or, if none, at the airport of the final destination not later than 1 hour after the planned arrival time of the passenger's original flight or flights.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.7 [Reserved]

§ 250.8 Denied boarding compensation.

(a) Etery carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraph (b), cash or an immediately negotiable check for the appropriate amount of compensation provided in § 250.5.

(b) Where a carrier arranges, for the passenger's convenience, alternate means of transportation that departs before the payment can be prepared and given to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

[ER-1394, 49 FR 43625, Oct. 31, 1984]

§ 250.9 Written explanation of denied boarding compensation and boarding priorities.

(a) Every carrier shall furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria. The carrier shall also furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier.

(b) The statement shall read as follows:

COMPENSATION FOR DENIED BOARDING

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the U.S. Civil Aeronautics Board.

VOLUNTEERS AND BOARDING PRIORITIES

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for a payment of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priority of (name of air carrier):

(In this space carrier inserts its boarding priority rules or a summary thereof, in a manner to be understandable to the average passenger.)

COMPENSATION OF INVOLUNTARY DENIED BOARDING

If you are denied boarding involuntarily, you are entitled to a payment of "denied boarding compensation" from the airline unless:

(1) You have not fully complied with the airline's ticketing, check-in, and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices, or (2) you are denied boarding because the flight is canceled; or (3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or (4) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or (5) the airline is able to place you on another flight or flights that are planned to reach your final destination within one hour of the scheduled arrival of your original flight.

AMOUNT OF DENIED BOARDING COMPENSATION

Passengers who are eligible for denied boarding compensation must be offered a payment equal to the sum of the face values of their ticket coupons, with a $200 maximum. However, if the airline cannot arrange "alternate transportation" (see below) for the passenger, the compensation is doubled ($400 maximum). The "value" of a ticket coupon is the one-way fare for the flight shown on the coupon including any surcharge and air transportation tax, minus any applicable discount. All flight coupons, including connecting flights, to the passenger's final destination or first 4-hour stopover are used to compute the compensation.

"Alternate transportation" is air transportation (by an airline licensed by the CAB) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover (of 4 hours or longer) or final destination no later than 2 hours (for flights within U.S. points, including territories and possessions) or 4 hours (for international flights) after the passenger's originally scheduled arrival time.

METHOD OF PAYMENT

The airline must give each passenger who qualifies for denied boarding compensation a payment by cash or check for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be sent to the passenger within 24 hours. The air carrier may offer free tickets in place of the cash payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.

PASSENGER'S OPTIONS

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

(Approved by the Office of Management and Budget under control number 3024-0003)

[ER-1306, 47 FR 52985, Nov. 24, 1982, as amended by ER-1337, 48 FR 29681, June 28, 1983; ER-1392, 49 FR 40401, Oct. 16, 1984; ER-1394, 49 FR 43625, Oct. 31, 1984]

§ 250.10 Reports of unaccommodated passengers.

Every carrier shall file, on a monthly basis, the information specified in CAB Form 251. The reporting basis shall be all flights originating or terminating at, or servicing, a point within the United States. The reports are to be submitted within 30 days after the month covered by the report. "Total Boardings" on line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. No reports need be filed for inbound international flights on which the protections of this part do not apply.

§ 250.11 Public disclosure of deliberate overbooking and boarding procedures.

(a) Every carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers, a sign located so as to be clearly visible and clearly readable to the traveling public, which shall have printed thereon the following statement in boldface type at least one-fourth of an inch high:

NOTICE—OVERBOOKING OF FLIGHTS

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations. Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.

(b) Every carrier shall include with each ticket sold in the United States the notices set forth in paragraph (a) of this section, printed in at least 12-point type. The notice may be printed on a separate piece of paper, on the ticket stock, or on the ticket envelope. The last two sentences of the notice shall be printed in a type face contrasting with that of the rest of the notice.

(c) It shall be the responsibility of each carrier to ensure that travel agents authorized to sell air transportation for that carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) [Reserved]

(e) Any air carrier or foreign air carrier engaged in foreign air transportation that complies fully with this part for inbound traffic to the United States need not use the last two sentences of the notices required by paragraph (a) of this subsection.

(Approved by the Office of Management and Budget under control number 3024-0018)

[ER-1306, 47 FR 52985, Nov. 24, 1982, as amended by ER-1392, 49 FR 40401, Oct. 16, 1984]

PART 252—SMOKING ABOARD AIRCRAFT

Sec.
252.1 Applicability.
252.2 No-smoking sections.
252.3 Ventilation systems.
252.4 Cigars and pipes.
252.5 Small aircraft.
252.6 Enforcement.
252.7 Waivers.

AUTHORITY: Secs. 204, 404, 407, and 416 of Pub. L. 85-726, as amended, 72 Stat. 743, 760, 766, 771, 49 U.S.C. 1324, 1374, 1377, 1386.

SOURCE: ER-1245, 46 FR 45939, Sept. 16, 1981, unless otherwise noted.

§ 252.1 Applicability.

This part establishes rules for the smoking of tobacco aboard aircraft. It applies to all operations of direct air carriers, except on-demand services of air taxi operators. Nothing in this regulation shall be deemed to require carriers to permit the smoking of tobacco aboard aircraft.

[ER-1383, 49 FR 25420, June 20, 1984]

§ 252.2 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, air carriers, when operating aircraft designed to have a passenger capacity of 30 seats or more, shall provide at a minium:

(1) A no-smoking area for each class of service and for charter service;

(2) A sufficient number of seats in the no-smoking sections of the aircraft for all persons who wish to be seated there; and

(3) Expansion of no-smoking sections to meet passenger demand.

(4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the nonsmoking passengers are not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding, an air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier's requirements as to time and method of obtaining a seat on the flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, a carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

[ER-1245, 46 FR 45939, Sept. 16, 1981, as amended at 48 FR 36094, Aug. 9, 1983; ER-1383, 49 FR 25420, June 20, 1984]

§ 252.3 Ventilation systems.

(a) Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

(b) Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the aircraft is on the ground.

[ER-1383, 49 FR 25420, June 20, 1984]

§ 252.4 Cigars and pipes.

Carriers shall adopt and enforce rules prohibiting the smoking of cigars and pipes aboard aircraft.

[ER-1383, 49 FR 25420, June 20, 1984]

§ 252.5 Small aircraft.

Carriers shall adopt and enforce rules prohibiting the smoking of tobacco on aircraft designed to have a passenger capacity of less than 30 seats.

[ER-1383, 49 FR 25420, June 20, 1984]

§ 252.6 Enforcement.

Each air carrier shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections and to enforce its rules with respect to the banning of smoking or the separation of passengers in smoking and no-smoking areas.

[ER-1383, 49 FR 25420, June 20, 1984]

§ 252.7 Waivers.

Air carriers may file with the Board's Docket Section applications for waivers of one or more of the requirements of this part, in order to experiment with other methods of achieving the public policy objectives of this part.

[ER-1245, 46 FR 45939, Sept. 16, 1981. Redesignated by ER-1383, 49 FR 25420, June 20, 1984]

PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE

Sec.
253.1 Purpose.
253.2 Applicability.
253.3 Definitions.
253.4 Incorporation by reference in the contract of carriage.
253.5 Notice of incorporated terms.
253.6 Explanation of incorporated terms.
253.7 Direct notice of certain terms.
253.8 Qualifications to notice requirements.

AUTHORITY: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

SOURCE: ER-1302, 47 FR 52134, Nov. 19, 1982, unless otherwise noted.

§ 253.1 Purpose.

The purpose of this rule is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for scheduled service in interstate and overseas passenger air transportation.

§ 253.2 Applicability.

This rule applies to all scheduled direct air carrier operations in interstate and overseas air transportation. It applies to all contracts with passengers, for those operations, that incorporate terms by reference.

[ER-1323, 48 FR 6318, Feb. 11, 1983]

§ 253.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

"Passenger" means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

"Ticket office" means station, office, or other location where tickets are sold that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

§ 253.4 Incorporation by reference in the contract of carriage.

(a) A ticket or other written instrument that embodies the contract of carriage may incorporate contract terms by reference (i.e., without stating their full text), and if it does so shall contain or be accompanied by notice to the passenger as required by this part. In addition to other remedies at law, an air carrier may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to that passenger in accordance with this part.

(b) Each air carrier shall make the full text of each term that it incorporates by reference in a contract of carriage available for public inspection at each of its airport and city ticket offices.

(c) Each air carrier shall provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms incorporated by reference in the contract. Each carrier shall keep available at all times, free of charge, at all locations where its tickets are sold within the United States information sufficient to enable passengers to order the full text of such terms.

(The notice requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982]

§ 253.5 Notice of incorporated terms.

Except as provided in § 253.8, each air carrier shall include on or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous notice that:

(a) Any terms incorporated by reference are part of the contract, passengers may inspect the full text of each term incorporated by reference at the carrier's airport or city ticket offices, and passengers have the right, upon request at any location where the carrier's tickets are sold within the United States, to receive free of charge by mail or other delivery service the full text of each such incorporated term;

(b) The incorporated terms may include and passengers may obtain from any location where the carrier's tickets are sold within the United States further information concerning:

(1) Limits on the air carrier's liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(2) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(3) Rights of the carrier to change terms of the contract. (Rights to change the price, however, are governed by § 253.7).

(4) Rules about reconfirmation of reservations, check-in times, and refusal to carry.

(5) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carrier or aircraft, and rerouting.

(Approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982; ER-1370, 48 FR 54591, Dec. 6, 1983; ER-1375, 49 FR 5064, Feb. 10, 1984]

§ 253.6 Explanation of incorporated terms.

Each air carrier shall ensure that any passenger can obtain from any location where its tickets are sold within the United States a concise and immediate explanation of any terms incorporated by reference, concerning the subjects listed in § 253.5(b).

(Approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982]

§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or permitting the carrier to raise the price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

(Approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982]

§ 253.8 Qualifications to notice requirements.

(a) If notice is not provided in accordance with § 253.5 at a ticket sales location outside of the United States that is not a U.S. air carrier ticket office, the price paid for the portion of such ticket that is for interstate and overseas air transportation shall be refundable without penalty if the passenger refuses transportation by the carrier. Each air carrier shall ensure that passengers who have bought tickets at those locations without the notice required in § 253.5 are given that notice not later than check-in for the travel in interstate or overseas air transportation, and that conspicuous notice is included on or with the ticket stating that the price for that travel is refundable without penalty.

(b) An air taxi operator (including a commuter air carrier) not operating under Subpart I of Part 298 of this chapter shall not be considered to have incorporated terms by reference into its contract of carriage merely because a passenger has purchased a flight segment on that carrier that appears on ticket stock that contains a statement that terms have been incorporated by reference. However, such an air taxi operator may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to the passenger in accordance with this part.

[ER-1370, 48 FR 54591, Dec. 6, 1983]

PART 254—DOMESTIC BAGGAGE LIABILITY

Sec.
254.1 Purpose.
254.2 Applicability.
254.3 Definitions.
254.4 Carrier liability.
254.5 Notice requirement.

AUTHORITY: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

SOURCE: ER-1374, 49 FR 5071, Feb. 10, 1984, unless otherwise noted.

§ 254.1 Purpose.

The purpose of this part is to establish rules for the carriage of baggage in interstate and overseas air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

§ 254.2 Applicability.

This part applies to any air carrier that provides charter or scheduled passenger service in interstate or overseas air transportation.

§ 254.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

§ 254.4 Carrier liability.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1250 for each passenger.

§ 254.5 Notice requirement.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $1250 per passenger."

PART 255—CARRIER-OWNED COMPUTER RESERVATION SYSTEMS

Sec.
255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Contracts with participating carriers.
255.6 Contracts with subscribers.
255.7 Service enhancements.
255.8 Marketing information.
255.9 Exceptions.
255.10 Review and termination.

AUTHORITY: Secs. 102, 204, 404, 411, 419, 1102, Pub. L. 85-726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.

SOURCE: ER-1385, 49 FR 32562, Aug. 15, 1984, unless otherwise noted.

§ 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for operation by air carriers of computer reservation systems used by subscribers so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that own, control or operate computerized reservations systems for subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 255.3 Definitions.

"Affiliate" means any person owned by, controlled by, or under common control with a carrier.

"Availability" means information provided in display with respect to the seats a carrier holds out as available for sale on a particular flight.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively that are engaged directly in the operation of aircraft in passenger air transportation.

"Discriminate", "discrimination," and "discriminatory" mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

"Participating carrier" means a carrier that has an agreement with a system vendor for display of its flight schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

"Primary display" means any display presented by a system vendor to comply with § 255.4.

"Service enhancement" means any product or service offered to subscribers or passengers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or to issue tickets for air transportation.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

"System" means a computerized airline reservation system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to make reservations and to issue tickets.

"System vendor" means a carrier or its affilates that owns, controls or operates a system.

§ 255.4 Display of information.

(a) All systems shall provide a primary display or primary displays that include the schedules, fares, rules and availability of all carriers in accordance with the provisions of this section. Primary displays shall be at least as useful for subscribers, in terms of functions or enhancements offered, and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor.

(b) In ordering the information contained in a primary display, system vendors shall not use any factors directly or indirectly relating to carrier identity.

(1) System vendors may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including the system vendor, and to all markets.

(2) System vendors shall provide to any person upon request the current criteria used in ordering flights for the primary displays and the weight given to each criterion.

(c) System vendors shall not use any factors directly or indirectly relating to carrier identity in constructing the primary displays of connecting flights.

(1) System vendors may select the connecting points to be used in the construction of connection flights for each city pair on the basis of any service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor, and to all markets.

(2) System vendors may select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(3) System vendors shall provide to any person upon request current information on:

(i) All connecting points used for each market;

(ii) All criteria used to select connecting points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in paragraphs (c)(3) (ii) and (iii) of this section.

(4) If system vendors select connecting points for use in constructing connecting flights they shall use at least nine points for each city-pair, except that vendors may select fewer than nine such connecting points for a city-pair where:

(i) Fewer than nine connecting points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The vendor has used all the points that meet those criteria, along with all additional connecting points requested by participating carriers.

(d) Upon receipt of information from any carrier, system vendors shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information.

(1) If a system vendor provides special loading capability to any other carrier, it shall offer the same capability to all participating carriers in a non-discriminatory fashion as soon as technically feasible.

(2) Each system vendor shall provide to any person upon request all current data base update procedures and data formats.

(Approved by the Office of Management and Budget under control number 3024-0075)

[ER-1385, 49 FR 32562, Aug. 15, 1984, as amended by ER-1391, 49 FR 40401, Oct. 16, 1984; ER-1395, 49 FR 44455, Nov. 7, 1984; ER-1396, 49 FR 46350, Nov. 26, 1984]

§ 255.5 Contracts with participating carriers.

(a) No system vendor shall discriminate among participating carriers in the fees for participation in its system, or for system related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system vendor shall condition participation in its system on the purchase or sale of any other goods or services.

(c) System vendors shall provide upon request to carriers current information on their fee levels and fee arrangements with other participating carriers.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 3024-0075)

[ER-1385, 49 FR 32562, Aug. 15, 1984, as amended by ER-1391, 49 FR 40401, Oct. 16, 1984]

§ 255.6 Contracts with subscribers.

(a) No subscriber contract shall have a term in excess of five years.

(b) No system vendor shall directly or indirectly prohibit a subscriber from obtaining or using any other system.

(c) No system vendor shall require use of its system, by the subscriber in any sale of its air transportation services.

(d) No system vendor shall require that a travel agent use its system as a condition for the receipt of any commission for the sale of its air transportation services.

(e) No system vendor shall charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.7 Service enhancements.

In the event that a system vendor offers a service enhancement to any participating carrier, it shall offer it to all participating carriers on non-discriminatory terms.

§ 255.8 Marketing information.

(a) With the exception of marketing, booking, and sales data relating to the international operations of any carrier, each system vendor shall make available to all U.S. participating carriers on non-discriminatory terms all marketing, booking, and sales data relating to U.S. carriers that it elects to generate from its system.

(b) System vendors and participating carriers shall not release marketing, booking, and sales data they generate or receive relating to international operations of any carrier, absent authorization to do so by the carrier.

(Approved by the Office of Management and Budget under control number 3024-0075)

[ER-1396, 49 FR 46350, Nov. 26, 1984]

§ 255.9 Exceptions.

(a) The obligations of a system vendor under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a non-discriminatory fee. A system vendor shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system vendor under this part shall not apply to any foreign air carrier that operates or whose affiliate operates an airline computer reservation system for travel agents outside the United States that does not display the flights of all United States carriers equally with the flights of the foreign carrier.

§ 255.10 Review and termination.

(a) The Federal agency administering this rule shall conduct a review within 5 years after its effective date.

(b) Unless extended on the basis of the review specified above, this rule shall terminate on December 31, 1990.

PART 256—DISPLAY OF JOINT OPERATIONS IN CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.
256.1 Purpose.
256.2 Applicability.
256.3 Definitions.
256.4 Display of Information.

AUTHORITY: Secs. 102, 204, 404, 411, 412, 419, 1102 Pub. L. 85-726 as amended, 72 Stat. 740, 743, 760, 769, 770, 797; 92 Stat. 1732; 94 Stat. 42; 49 U.S.C. 1302, 1324, 1374, 1381, 1382, 1389, 1502.

SOURCE: ER-1377, 49 FR 12677, Mar. 30, 1984, unless otherwise noted.

§ 256.1 Purpose.

The purpose of this part is to set forth a requirement for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, predatory, and anticompetitive practices in air transportation.

§ 265.2 Applicability.

This rule applies to air carriers or foreign air carriers that own, control, or operate computerized reservation systems for travel agent subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 256.3 Definitions.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C 1301(22), and § 298.2(f) of this chapter, respectively that is engaged directly in the operation of aircraft in passenger air transportation.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of computer terminal.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

"System" means a computerized airline reservation system offered by a carrier to subscribers, for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

"System vendor" means a carrier that owns, controls or operates a system.

"Designator code" means the airline designations allotted and administered pursuant to Agreements CAB 24606 and 26056.

§ 256.4 Display of Information.

(a) A system vendor shall not deny access to its system to two or more carriers whose flights share a single designator code, absent a determination by the Board that the use of the code constitutes a violation of 49 U.S.C. 1381.

(b) A system vendor shall not discriminate against any carrier on the basis of that carrier's using the same designator code as another carrier, either by display bias, or any other means relating to providing the system.

PART 263—PARTICIPATION OF AIR CARRIER ASSOCIATIONS IN BOARD PROCEEDINGS

Sec.

263.1 Definitions.
263.2 [Reserved]
263.3 Participation.

AUTHORITY: Secs. 102, 204, 412, and 1001 of the Federal Aviation Act of 1959, as amended, 72 Stat, 740, 743, 770, and 788, 49 U.S.C. 1302, 1324, 1382, and 1481.

SOURCE: ER-1089, 43 FR 60870, Dec. 29, 1978, unless otherwise noted.

§ 263.1 Definitions.

(a) "Air carrier association" means an association composed entirely or in part of direct air carriers.

(b) "Board proceeding" means any proceedings of the Board to which the Board's procedural regulations apply.

[ER-1089, 43 FR 60870, Dec. 29, 1978, as amended by ER-1354, 48 FR 35081, Aug. 3, 1983]

§ 263.2 [Reserved]

§ 263.3 Participation.

(a) An air carrier association may participate in a Board proceeding only if:

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Board of factual information gathered from the members, as distinguished from presentation of opinions or positions on issues; or

(3) The association represents members that are identified in any documents filed with the Board, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Board.

(b) Upon motion of any interested person or upon its own initiative, the Board may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

PART 270—CRITERIA FOR DESIGNATING ELIGIBLE POINTS

Subpart A—General Provisions

Sec.
270.1 Purpose.
270.2 Applicability.
270.3 Definitions.
270.4 Evaluation of isolation.
270.5 Evaluation of traffic.

Subpart B—Criteria for Communities in the 48 Contiguous States

270.10 Communities close to hubs.
270.11 Communities not close to hubs.
270.12 Communities close to non-hub eligible points.

Subpart C—Criteria for Communities in Alaska and Hawaii

270.20 Deleted communities.
270.21 Other communities.

AUTHORITY: Secs. 204 and 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389.

SOURCE: ER-1159, 44 FR 76770, Dec. 28, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 270.1 Purpose.

This rule establishes objective criteria for designating small communities as eligible points under section 419(b) of the Act.

§ 270.2 Applicability.

This part applies to the following communities:

(a) Communities that were deleted from an air carrier's section 401 certificate between July 1, 1968, and October 24, 1978;

(b) Communities that lost all certificated service at their airport as a result of being hyphenated on a section 401 certificate between July 1, 1968, and October 24, 1978, with another community that was served by more than one certificated carrier on October 24, 1978; and

(c) Any other communities in Alaska or Hawaii that apply for designation as an eligible point.

§ 270.3 Definitions.

As used in this part:

"Eligible point" means a community for which the Board will guarantee essential air service in accordance with the guidelines in Part 398 of this chapter.

"Hub" means a point annually enplaning more than 0.05 percent of the total enplanements in the United States.

§ 270.4 Evaluation of isolation.

The isolation of a community will be evaluated by measuring the driving distance from its center to the nearby hub's airport or to an eligible point's airport.

§ 270.5 Evaluation of traffic.

In evaluating traffic at a community the Board shall consider the following information:

(a) Historic traffic levels at the community;

(b) The future traffic generating potential of the community;

(c) Data submitted by the State, the interested community, or a carrier that has served or is serving the community;

(d) The reliability of the historic traffic data as an indication of the community's present traffic level;

(e) The availability of public surface transportation from the candidate community to its communities of interest and nearby hubs;

(f) The type and quality of air service that has been maintained at the nearby hub;

(g) Facility improvements at the community's airport to the extent that they will lead to an increase in enplanements there; and

(h) The potential of the community for developing self-supporting air service, or subsidized air service at a reasonable cost to the Federal government.

Subpart B—Criteria for Communities in the 48 Contiguous States

§ 270.10 Communities close to hubs.

A community that is less than 30 road miles from a hub airport will not be designated as an eligible point by the Board.

§ 270.11 Communities not close to hubs.

Except as provided in § 270.12:

(a) A community that is at least 30, but less than 60, road miles from a hub airport will be designated as an eligible point by the Board if that community enplaning 20 passengers each day during 5 days of the week;

(b) A community that is 60 or more road miles from a hub airport will be designated an eligible point by the Board if that community enplanes or has the potential for enplaning 10 passengers each day during 5 days of the week; and

(c) A community that is more than 100 road miles from a hub will be designated as an eligible point if there is a sufficient demand for air service there to warrant that designation.

§ 270.12 Communities close to non-hub eligible points.

A community will not be designated as an eligible point under this part if it is less than 20 road miles from the airport of a section 419(a) eligible point.

Subpart C—Criteria for Communities in Alaska and Hawaii

§ 270.20 Deleted communities.

A community in Alaska that was deleted from an air carrier's section 401 certificate between July 1, 1968, and October 24, 1978, or lost all certificated service at its airport as a result of being hyphenated with a multi-carrier point on a section 401 certificate between those dates, will be designated an eligible point by the Board if it enplanes or has the potential for enplaning at least 5 passengers each week or an equivalent combination of cargo, mail and passengers.

§ 270.21 Other communities.

(a) Any community in Alaska not covered by § 270.20 may be designated an eligible point after January 1, 1982, if, upon the application of that community, the Board finds that:

(1) The community enplanes or has the potential for enplaning at least 5 passengers each week or an equivalent combination of cargo, mail and passengers; and

(2) Designating that community as an eligible point will not result in more than——points[1] receiving a subsidy under section 419 and section 406 of the Act.

(b) Any community in Hawaii may be designated an eligible point after January 1, 1982, if upon the application of that community, the Board finds that:

(1) The community meets the criteria set forth in Subpart B of this part; and

(2) Designating that community as an eligible point will not result in more than——points[1] receiving a subsidy under section 419 and section 406 of the Act.

PART 271—GUIDELINES FOR SUBSIDIZING AIR CARRIERS PROVIDING ESSENTIAL AIR TRANSPORTATION

Sec.
271.1 Purpose.
271.2 Definitions.
271.3 Carrier subsidy need.
271.4 Carrier costs.
271.5 Carrier revenues.
271.6 Profit element.
271.7 Subsidy payout formula.
271.8 Rate period.
271.9 Discrimination prohibited.

AUTHORITY: Secs. 204 and 419 of Pub. L. 85-726, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389.

SOURCE: ER-1398, 49 FR 49846, Dec. 24, 1984, unless otherwise noted.

§ 271.1 Purpose.

This part establishes the guidelines required by section 419(d) of the Act to be used by the Board in establishing the fair and reasonable amount of compensation needed to insure the continuation of essential air transportation to an eligible point under sections 419(a)(5) and (b)(6). These guidelines serve as a reference for all parties participating in the rate conferences where carrier subsidy proposals are negotiated with our staff. These guidelines are intended to cover normal carrier selection cases and not emergency carrier selection cases.

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[1] The number of subsidized points on July 1, 1968 will be supplied at a later date.

§ 271.2 Definitions.

As used in this part:

"Eligible point" means any community in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate issued by the Board under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided; or any such community that was deleted from a section 401 certificate between July 1, 1968, and October 24, 1978, that the Board designates as an eligible point under Part 270 of this chapter; or any other community in Alaska or Hawaii that the Board designates as an eligible point under Part 270 of this chapter.

"Essential air transportation" or "essential air service" means the level of air service determined by the Board, according to the guidelines in Part 398 of this chapter to be necessary to insure that people of the eligible point concerned have access to the Nation's air transportation system and to one or more of their principal destinations.

"Fixed incentive rate" means a subsidy rate in which the air carrier's subsidy does not change even if its actual costs or revenues differ from those that were projected for it.

"Shared incentive rate" means a subsidy rate in which the Board and the air carrier involved share in the extra profits or losses that occur when actual results differ from the costs or revenues that were projected for the carrier.

§ 271.3 Carrier subsidy need.

In establishing the subsidy for an air carrier providing essential air transportation at an eligible point, the Board will consider the following:

(a) The reasonable projected costs of a carrier in serving that point;

(b) The carrier's reasonable projected revenues for serving that point;

(c) The appropriate size of aircraft for providing essential air transportation at that point; and

(d) A reasonable profit for a carrier serving that point.

§ 271.4 Carrier costs.

(a) The reasonable costs projected for a carrier providing essential air transportation at an eligible point will be evaluated:

(1) For costs attributable to the carrier's flying operations (direct expenses), by comparing the projected costs submitted by the carrier with the following:

(i) The carrier's historic direct operating costs with the same or similar aircraft types;

(ii) The direct operating unit costs of similar carriers using the same or similar equipment; and

(iii) Data supplied by the manufacturer of the carrier's aircraft.

(2) For other costs, by one or more of the following methods:

(i) By direct assignment where the indirect costs are attributable to the carrier's operations at the eligible point;

(ii) By comparing indirect operating expenses submitted by the carrier to cost surveys such as the Small Aircraft Costing Survey prepared by the Board; or

(iii) By comparing the indirect operating expenses submitted by the carrier with the ratio of indirect to direct costs that have been experienced by the carrier in other markets or to costs that are representative of the industry.

(3) By considering the unique circumstances of the carrier or the community being served that justify deviations from the costs that would otherwise be established for that carrier under this paragraph.

(4) By determining whether the aircraft to be used by the carrier at the eligible point, and on which its costs are derived, are appropriate for providing essential air transportation there. The appropriateness of the aircraft to be used is based on the follow-

ing characteristics of the eligible point:

(i) Traffic levels;

(ii) The level of air service that the Board has decided is essential for the eligible point;

(iii) Distance to the designated hub;

(iv) The altitude at which the carrier must fly to the designated hub; and

(v) Other operational elements involved.

(b) When the essential air service would be made part of the carrier's linear system, the Board might, instead of the factors in paragraph (a) of this section, consider only the incremental costs that the carrier will incur in adding that service to its system.

(c) If the carrier's actual costs exceed the projected costs established by the Board under this section, a carrier receiving subsidy under a fixed incentive rate shall absorb all the excess expenses, unless the Board determines that the sharing of specific costs would be in the public interest.

§ 271.5 Carrier revenues.

(a) The projected passenger revenue for a carrier providing essential air transportation at an eligible point will be calculated by multiplying the following:

(1) A reasonable projected net fare, which is the standard fare expected to be charged for service between the eligible point and the designated hub less any dilution caused by joint fare arrangements, discount fares that it offers, or prorates of fares for through one-line passengers; and

(2) The traffic (including both local and beyond traffic) projected to flow between the eligible point and the designated hub or hubs, which is based on the carrier's own estimates, Board estimates, and on traffic levels in the market at issue when such data are available.

(b) The reasonableness of a carrier's passenger revenue projections will be evaluated by:

(1) Comparing the carrier's proposed fare with the fare charged in other city-pair markets of similar distances and traffic densities; and

(2) Comparing the carrier's proposed pricing structure with historical pricing practices in the market at issue, with the pricing practices of that carrier in other markets, and with any standard industry pricing guidelines that may be available.

(c) An estimate of freight and other transport-related revenue will be included as a component of projected revenues and will be based on recent experience in the market involved and on the experience of the carrier involved in other markets.

§ 271.6 Profit element.

The reasonable return for a carrier for providing essential air transportation at an eligible point generally will be set at a flat percentage, typically not more than 5 percent of that carrier's projected operating costs as established under § 271.4, plus any applicable interest expenses on flight equipment.

§ 271.7 Subsidy payout formula.

(a) Subsidy will be paid by the Board to the air carrier monthly, based on the subsidy rate established by the Board for the carrier under this part. Payments will not vary except as provided in this section.

(b) Even if the air carrier is on a fixed incentive rate, the actual amount of each payment may vary depending on the following factors:

(1) Seasonal characteristics of the carrier's operations at the eligible point;

(2) The actual number of flights completed, aircraft miles flown, available seat-miles flown, or variations in other operational elements upon which the subsidy rate is based; or

(3) Adjustments to the carrier's subsidy required by § 271.4(c) or § 271.8(b).

(c) If the air carrier is on a shared incentive rate, its monthly payments will vary on the basis of the sharing formula established at the time that the carrier's subsidy rate is set.

(d) Payments will continue for the duration of the rate term established under § 271.8 provided that the carrier continues to provide the required service.

§ 271.8 Rate period.

(a) The subsidy rate generally will be set for a 2-year period, or two consecutive 1-year periods. The Board may set the rate for a shorter period in the following situations:

(1) A commuter air carrier is replacing a larger certificated carrier at the eligible point;

(2) Traffic at the eligible point has substantially decreased;

(3) The Board considers the cost or revenue projections of the carrier for the second year to be unrealistic;

(4) It is likely that there will be changes in the eligible point's essential air service level; or

(5) The uncertainties of the market or othe circumstances warrant a shorter rate period.

(b) The subsidy rate established for a carrier under this part will not be changed during the rate period unless an adjustment is required in the public interest.

(c) At the end of the rate period, the carrier will not have a continuing right to receive subsidy for providing essential air transportation at the eligible point.

§ 271.9 Discrimination prohibited.

(a) All air carriers receiving subsidy under this part shall comply with the following:

(1) The Age Discrimination Act of 1975;

(2) The Civil Rights Act of 1964 and Part 379 of this chapter; and

(3) The Rehabilitation Act of 1973 and Part 382 of this chapter.

(b) Within 1 year after it first receives a subsidy under this part, the carrier shall evaluate its practices and procedures for accommodating the handicapped in accordance with § 382.23 of this chapter.

(c) All air carriers seeking a subsidy under this part shall include in their subsidy application the assurances required by §§ 379.4 and 382.21 of this chapter.

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Sec.
288.1 Definitions.
288.2 Exemption.

§ 288.1 Definitions.

As used in this part:

"Military scheduled transportation" means the transportation in scheduled service of individually ticketed passengers or individually waybilled cargo in foreign and overseas air transportation, in air transportation between the 48 contiguous States on the one hand and Hawaii and Alaska on the other hand, and in air transportation within Alaska, pursuant to contract with DOD.

"Charter service" means air transportation in planeload lots of persons and/or property pursuant to contract with DOD.

"DOD" means the Department of Defense.

(Secs. 204, 403, and 416 of the Federal Aviation Act, as amended; 72 Stat. 743, 758, 771, as amended; 49 U.S.C. 1324, 1373, 1386)

[ER-1134, 44 FR 43463, July 25, 1979]

§ 288.2 Exemption.

Air carriers providing charter service and military scheduled transportation to DOD are hereby exempted from section 403 of the Act and Part 221, § 207.4, and § 208.32 of this chapter with respect to those services.

(Secs. 204, 403, and 416 of the Federal Aviation Act, as amended; 72 Stat. 743, 758, 771, as amended; 49 U.S.C. 1324, 1373, 1386)

[ER-1134, 44 FR 43463, July 25, 1979]

PART 291—DOMESTIC CARGO TRANSPORTATION

Subpart A—General

Sec.
291.1 Applicability.
291.2 Definitions.

Subpart B—All-Cargo Air Service Certificates

291.10 General.
291.11 Form and content of applications.
291.12 Procedure on receipt of application.

Sec.
291.13 Certificate conditions.
291.14 Amendment of certificates.
291.15 Delay in start of initial service.

Subpart C—General Rules for Domestic Cargo Transportation

291.20 Applicability.
291.22 Aircraft accident liability insurance requirement.
291.23 Record retention.
291.24 Waiver of Board Economic Regulations.

Subpart D—Exemptions for Domestic Cargo Transportation

291.30 General.
291.31 Exemptions from the Act for direct air carriers.
291.32 Exemptions from the Act for persons other than direct air carriers.
291.33 [Reserved]
291.34 Duration of exemptions.

Subpart E—Reporting Rules

291.40 [Reserved]
291.41 Financial and statistical reporting—general.
291.42 Section 418 financial and statistical reporting.

Subpart F—Enforcement

291.50 Enforcement.

AUTHORITY: Secs. 101, 102, 204, 401, 407, 408, 416, 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388, unless otherwise noted.

SOURCE: ER-1080, 43 FR 53635, Nov. 16, 1978, unless otherwise noted.

Subpart A—General

§ 291.1 Applicability.

This part applies to domestic cargo transportation by air carriers certificated under sections 401 or 418 of the Act. It also applies to applicants for a certificate under section 418 of the Act, and to persons entering into control relationships or consolidations with domestic cargo air carriers.

§ 291.2 Definitions.

"Act" means the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301 et seq.

"All-cargo air carrier" or "section 418 carrier" means an air carrier holding an all-cargo air service certificate issued under section 418 of the Act to provide domestic cargo transportation.

"All-cargo air service" means domestic cargo transportation performed by any air carrier holding a certificate issued under section 418 of the Act.

"Domestic cargo transportation" means the carriage by aircraft in interstate or overseas air transportation of property or mail, or both.

"FAA" means the Federal Aviation Administration, U.S. Department of Transportation.

"Section 401 carrier" means an air carrier certificated under section 401 of the Act.

[ER-1080, 43 FR 53635, Nov. 16, 1978, as amended by ER-1402, 50 FR 454, Jan. 4, 1985]

Subpart B—All-Cargo Air Service Certificates

§ 291.10 General.

Within 180 days after receipt of an application complying with this subpart from any U.S. citizen, the Board will issue a certificate to perform all-cargo air service, under section 418 of the Act, unless the Board finds that the applicant is not fit, willing, and able to provide such service or to comply with the Act or the orders and regulations of the Board. The 180-day period will not begin to run until the Board has received an application that is complete in all respects.

§ 291.11 Form and content of applications.

An original and six copies, typed on 8½ x 11-inch paper, shall be filed with the Docket Section, Office of the Secretary, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. The application may be mailed or delivered to Room 714, 1825 Connecticut Avenue, N.W., Washington, D.C. The application shall be conspicuously titled "Section 418 Application," and shall be accompanied by a check or money order payable to the Civil Aeronautics Board, in the amount of $670. The original of the application shall be manually signed and dated by the applicant, or by an authorized officer, partner, trustee, etc., of the applicant. The application shall contain all of the following information:

(a) *Identification of the applicant.* (1) Name, mailing address, and telephone number of the applicant.

(2) Type of organization of the applicant, and State under whose law applicant is organized, if a corporation partnership, trust, etc.

(3) A statement that the applicant is a citizen of the United States as defined in section 101(14) of the Act.

NOTE: Section 101(14) of the Act provides that a "citizen of the United States" means "(a) an individual who is a citizen of the United States or one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions."

(4) If any officers, directors, partners, trustees, shareholders, or persons who have the power to influence the management of the applicant are not U.S. citizens, state the names and citizenship of each such person, and describe each such person's interest in the applicant.

(b) *Applicant's past and present operations.* (1) The names of all directors, partners, trustees officers, and principal management personnel of the applicant, and indicate the positions held by each.

(2) The total number of applicant's employees.

(3) A brief, narrative, chronological history of the ownership and operations of the applicant and its predecessors. Identify any civil Aeronautics Board, State, or foreign authority under which the applicant has conducted or is conducting air operations.

(4) A report on passenger and cargo air operations, if any, performed by the applicant or its predecessors over the past 3 years, totaled by year-end, showing:

(i) Aircraft hours flown;

(ii) Aircraft miles flown; and

(iii) Revenue ton-miles flown.

(5) The types of aircraft used in the above operations, the top 10 markets served, and the type of service performed. A list of aircraft owned or leased by the applicant, indicating type of aircraft, seating capacity and cargo capacity, and whether owned or leased.

(6) Applicant's equipment (exclusive of aircraft) and ground facilities owned or leased, including applicant's main base of operations.

(7) For the most recent 12-month period and, on a calendar or fiscal year basis, for the 2 preceding years (audited if possible), separating out for transport, transport-related and non-transport activities:

(i) Balance sheet;

(ii) Profit and loss statement; and

(iii) Cash flow statement.

(8) All material adverse changes, if any, in the financial position of the applicant that have occurred since the closing date of the balance sheet submitted in response to paragraph (a) of this section.

(9) All claims in litigation over $5,000, and any liabilities more than 60 days past due, on the date of the application.

(10) All FAA authority held by the applicant, and the address and telephone number of the responsible FAA office.

(c) *Projected operations.* (1) The general geographic scope, the aircraft type, and the revenue hours anticipated for the first year of operations.

(2) Provide for the first year of operations, an illustrative profit and loss statement, pro-forma balance sheet (as at the end of the period), and cash flow statement.

(3) For applicants not now providing air service, an organization plan of the proposed company, identify the directors, partners, trustees, officers, and principal management personnel, and briefly state the relevant qualifications.

(4) A detailed description of all provisions for the payment of cargo losses or damage claims, including insurance, claims reserves, etc.

(5) A statement of whether applicant's projected operations will require additional authority from the FAA, and if so, the status of any appli-

cation for that authority, with the name, address, and telephone number of the FAA personnel responsible for processing the application.

(d) *Compliance disposition.* (1) A description of each formal or docketed complaint lodged against the applicant, any predecessor or affiliate thereof (or against any other transportation company over which the applicant or any predecessor exercises or has ever exercised control) in the past 5 years, regarding compliance with the Federal Aviation Act or the rules, regulations, and requirements issued under it. The final disposition, if any, of each incident.

(2) A statement of whether, within the past 5 years, any of the persons and/or companies listed in paragraph (d)(1), either as a partner, officer, director, or stockholder, has been affiliated with, controlled by, or participated in control of any air carrier which, during such affiliation, was found to have committed knowing, willful violations of the Act, or of any order, rule, or regulation issued pursuant to the Act. If so, list the orders.

(3) Any action taken by the FAA under § 13.15 (involving civil penalties) § 13.17, § 13.19, or § 13.23 of this title in the past 5 years, and the disposition of each.

(4) An indication of whether the applicant, any predecessor, or any of the persons listed in the applicant's application has ever been found to have committed a felony, anti-trust violation, or to have engaged in criminal or civil fraud. Identification of the proceeding and provide a description, including current status or final disposition.

(e) [Reserved]

(f) *Other information.* The applicant may submit any other information that it believes to be relevant to the Board's decision of whether to issue it an all-cargo air service certificate.

(Approved by the Office of Management and Budget under control number 3024-0022)

[ER-1080, 43 FR 53635, Nov. 16, 1978; ER-1101, 44 FR 7656, Feb. 7, 1979, as amended by ER-1270, 46 FR 63220, Dec. 31, 1981; ER-1293, 47 FR 18587, Apr. 30, 1982; ER-1317, 48 FR 3717, Jan. 27, 1983]

§ 291.12 Procedure on receipt of application.

(a) Within 14 business days after the receipt of an application, the Board will notify the applicant whether its application is complete. If the application is not complete, the applicant will be told what information is necessary to complete the application. Applications will not be processed, and the 180-day period for issuance of a certificate will not begin to run, until the application is complete.

(b) Promptly upon the determination that an application is complete, the Board will (1) prepare a summary of the application and forward it to the FEDERAL REGISTER for publication, and (2) forward a copy of the application to the Secretary of Transportation with a request for a safety and compliance report from the FAA, and for recommendations on the safety implications of the proposed new service.

(c) The Board will hold the application for 21 days following the date of publication in the FEDERAL REGISTER for receipt of opposition from any member of the public. Opposition must be in writing, must identify the applicant and the docket number assigned to its application, and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The applicant shall be served by the opposing person with a copy of all documents submitted in opposition, at the same time that the documents are filed with the Board. The opposing documents shall contain proof of such service. The applicant shall have 14 days after receipt to reply to any opposing documents.

(d) After the period for the receipt of documents has expired, the Board will either (1) grant or deny the application on the basis of the written record, (2) request further information, or (3) set any disputed material issues of fact for expedited hearing before an Administrative Law Judge.

(e) In the case of applications that are opposed by any person, including the Secretary of Transportation, any further proceedings shall be governed by the Board's rules of practice, Part 302 of this title.

(f) The Board will transmit a copy of each certificate to the FAA when it is issued.

§ 291.13 Certificate conditions.

(a) All-cargo air service certificates shall remain effective only as long as the holder retains its U.S. citizenship (as defined in section 101(14) of the Act) and its insurance coverage required by § 291.22.

(b) All-cargo service certificates shall confer no right to receive subsidy, for the carriage of mail or otherwise.

(c) All-cargo air service certificates shall confer no right to carry passengers (except cargo attendants), or to engage in any air transportation outside the geographical scope of domestic cargo transportation. They shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(d) All-cargo air service certificates shall entitle the holder to carry cargo attendants accompanying a shipment.

(e) Failure to file the reports required by this part, or to comply with the Act or the Board's regulations, shall be sufficient grounds to revoke a certificate.

(f) The authority to transport U.S. mail under this certificate is permissive, unless the Board, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service.

(g) All-cargo air service certificates shall be held only by the applicant and shall not be transferred to any other person.

§ 291.14 Amendment of certificates.

Holders of all-cargo air service certificates shall notify the Board of any changes in the identification information supplied on the application under § 291.11(a). Notification must be received by the Board not later than 10 days after the change. An original and six copies, typed on 8½ x 11-inch paper, shall be filed with the Docket Section, Office of the Secretary, Civil Aeronautics Board, Washington, D.C. 20428. The notification may be mailed or delivered to Room 714, 1825 Connecticut Avenue NW., Washington, D.C.

§ 291.15 Delay in start of initial service.

An all-cargo air carrier that has not begun initial operations to provide the air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Board, within 2 years of the date of that finding, or that for a period of 2 years from the date of the most recent such findings has not provided any air transportation for which that type of finding is required, shall re-file data required by § 291.11 at least 90 days before it intends to provide any such air transportation. If there has been no change in data previously submitted, the carrier shall file a statement to that effect signed by one of its officers. The carrier may call the Director, Bureau of Domestic Aviation (202-673-5319), or such person's designee, to find out what data are already available to the Board and need not be included in the re-filing. A carrier to which this section applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Board either decides that the carrier continues to meet that requirement, or finds that the carrier is fit, willing, and able to perform such air transportation. The Board will normally notify the carrier within 60 days of receipt of all required data that either the Board's previous findings continues in effect or further investigation is necessary. The date of the decision of the Board that its previous finding continues in effect will begin a new 2-year period under this section.

[ER-1308, 47 FR 52991, Nov. 24, 1982]

Subpart C—General Rules for Domestic Cargo Transportation

§ 291.20 Applicability.

These rules apply to all domestic cargo transportation performed by air carriers certificated under sections 401 or 418 of the Act. Section 418 carriers that operate passenger-only or combination aircraft under section 401, Part

298 of this title, or other Board authority, must comply with these rules in connection with all domestic cargo transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier may operate a particular flight under either a section 401 certificate or a section 418 certificate, the flight is presumed to be operated under the carrier's section 418 authority.

§ 291.22 Aircraft accident liability insurance requirement.

No air carrier shall operate all-cargo aircraft or provide all-cargo air service in domestic cargo transportation unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of Part 205 of this chapter.

[ER-1255, 46 FR 52583, Oct. 27, 1981]

§ 291.23 Record retention.

(a) The provisions of 14 CFR Part 249, *Preservation of air carrier accounts, records and memoranda*, shall apply to all carriers, except that records pertaining to transportation provided on aircraft eligible to be operated under Part 298 of this title, and records concerning transportation outside the geographic scope of domestic cargo transportation, need not be maintained unless required by other Board regulations.

(b) Each carrier shall retain for 1 year a copy of each rate sheet, airwaybill contract, and other document reflecting changed, new, or other previously unreported general or special prices or rules governing the carriage of freight in domestic cargo transportation (except mail), unless the transportation was performed in accordance with an effective tariff on file with the Board. Each carrier shall retain for 1 year a copy of any formula based on standard weight, mileage, or other method used to determine an individual airbill or contract.

(Approved by the Office of Management and Budget under control number 3024-0022)

[ER-1080, 43 FR 53635, Nov. 16, 1978, as amended by ER-1270, 46 FR 63220, Dec. 31, 1981]

§ 291.24 Waiver of Board Economic Regulations.

Except for this part and those parts of the Board's Economic Regulations (Part 200 through 299 of this title) specifically referred to in this part, carriers providing domestic cargo transportation are, with respect to that transportation, relieved from all obligations imposed on air carriers by those economic regulations. Flights operated entirely within domestic cargo transportation shall be free from those obligations, even though they may also carry shipments to or from points outside that geographic area. This waiver shall not apply to the requirements of Part 239 of this title.

Subpart D—Exemptions for Domestic Cargo Transportation

§ 291.30 General.

The following exemptions, except as otherwise specifically noted, apply only to domestic cargo transportation. They do not relieve a carrier from obligations derived from other transportation.

§ 291.31 Exemptions from the Act for direct air carriers.

(a) Each direct air carrier providing domestic cargo transportation is, with respect to such transportation, exempted from the following section or subsection of the Act only if and so long as it complies with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit it to conduct domestic cargo transportation operations:

(1) Section 403.

(2) Section 404, except for the requirement to provide safe and adequate service, equipment, and facilities in connection with domestic cargo air transportation.

(3) Section 405 for all-cargo operations under section 418.

(4) Sections 407(b) and 407(c).

(b) [Reserved]

(c) Each direct air carrier providing domestic cargo transportation under section 418 of the Act is exempted from the provisions of section

401(o)(1) of the Act to the extent necessary to permit it to compete for and operate domestic cargo charters for the Department of Defense under contracts of more than 30 days' duration.

(Secs. 204(a), 401, 403, 408, 412, and 416(b), Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 767, 770, 771; 49 U.S.C. 1324, 1371, 1373, 1378, 1382, 1386)

[ER-1103, 44 FR 9591, Feb. 14, 1979, as amended by ER-1230, 46 FR 32560, June 24, 1981; ER-1242, 46 FR 43958, Sept. 2, 1981; ER-1358, 48 FR 38459, Aug. 24, 1983; ER-1367 and ER-1368, 48 FR 54592 and 54593, Dec. 6, 1983; ER-1380, 49 FR 25226, June 20, 1984; 50 FR 31142, July 31, 1985]

§ 291.32 Exemptions from the Act for persons other than direct air carriers.

(a)—(b) [Reserved]

(c) The Department of Defense is exempted from section 401(o) of the Act to the extent necessary to permit it to negotiate and enter into contracts of more than 30 days' duration with any section 418 carrier for operation of domestic cargo charters.

(Secs. 204(a), 401, 403, 408, 412, and 416(b), Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 767, 770, 771; 49 U.S.C. 1324, 1371, 1373, 1378, 1382, 1386)

[ER-1358, 48 FR 38459, Aug. 24, 1983 and 50 FR 31142, July 31, 1985]

§ 291.33 [Reserved]

§ 291.34 Duration of exemptions.

The exemptions granted in §§ 291.31 through 291.33 shall continue in effect until the Board finds that the exemption is no longer in the public interest.

Subpart E—Reporting Rules

§ 291.40 [Reserved]

§ 291.41 Financial and statistical reporting—general.

(a) Carriers providing domestic cargo transportation that also conduct other operations under section 401 shall comply with the provisions of Part 241 of this title.

(b) Carriers providing domestic cargo transportation under section 418 certificates shall comply with § 291.42.

(c) Carriers providing domestic cargo transportation under section 418, and also providing other services under Part 298 of this title, shall report their domestic cargo transportation operations in accordance with § 291.42, and shall report all other traffic in accordance with the provisions of Subpart F of Part 298.

§ 291.42 Section 418 financial and statistical reporting.

(a) *General instructions.* (1) Carriers operating under section 418 certificates that are not subject to Part 241 of this chapter shall file Form 291-A, Statement of Operations and Statistics Summary for section 418 operations.

(2) The form required by this section shall be filed annually on February 10 covering the 12 months ending December 31. It shall be filed at the Office of the Comptroller, Information Management Division, B-46a, Civil Aeronautics Board, Washington, D.C. 20428.

(3) The carrier's chief accounting officer shall sign a certification attesting to the truth and completeness of the reports required by this section.

(b) *Statement of Operations and Statistics Summary for section 418 operations.* This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenue from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses;

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(4) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

(c) *Summary of traffic and capacity statistics.* This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that

stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.

[ER-1350, 48 FR 32757, July 19, 1983]

Subpart F—Enforcement

§ 291.50 Enforcement.

In case of any violation of any of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 901(a) of the Act; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions including suspension or revocation of operating authority.

PART 292—CLASSIFICATION AND EXEMPTION OF ALASKAN AIR CARRIERS

Sec.
292.1 Classification.
292.2 Charter trips and special services.
292.3 [Reserved]
292.4 Off-route schedules; filing requirements and effect thereof.

AUTHORITY: Secs. 204, 401, 416, 72 Stat. 743; 49 U.S.C. 1324, 1371, 1386.

SOURCE: ER-410, 29 FR 9822, July 22, 1964, unless otherwise noted.

§ 292.1 Classification.

There is hereby established, within the meaning of section 416(a) of the Federal Aviation Act of 1958, a classification of air carriers which engage in air transportation (a) solely between points within the State of Alaska or (b) solely between points within the State of Alaska and between points within the State of Alaska and points in Canada, said classification to be designated as Alaskan air carriers.

§ 292.2 Charter trips and special services.

An Alaskan air carrier which holds a certificate of public convenience and necessity issued by the Board may make charter trips and render other special services between points on routes which it is authorized by its certificate to serve. Charter trips and other special services may also be rendered to or from any other point within or without Alaska: *Provided, however,* That such trips originate at or are destined to a point in Alaska which is named in the carrier's certificate or which is located within 25 miles of the airline course over the carrier's regular route and is actually being served by the carrier as an intermediate point pursuant to a schedule on file with the Board under section 405(b) of the Act: *And provided further,* That all such trips to and from points outside of Alaska are casual, occasional, or infrequent, and are not made in such manner as to result in establishing a regular or scheduled service.

§ 292.3 [Reserved]

§ 292.4 Off-route schedules; filing requirements and effect thereof.

(a) An Alaskan air carrier which desires to include in schedules which it files under section 405(b) of the Act any new off-route point, pursuant to a provision in its certificate of public convenience and necessity authorizing it to serve as an intermediate point any point not more than 25 miles off the airline course over its regular route, shall file such schedule not later than 30 days prior to the desired effective date. The schedule shall be accompanied by a statement setting out all applicable economic data bearing on the need for the proposed service: *Provided,* That the Board may permit the filing of such schedules within less than 30 days prior to the desired effective date upon a showing that the public interest will thereby be served.

(b) A flight schedule filed pursuant to this section may be operated according to its terms unless, at least five days prior to the effective date thereof, the Board notifies the carrier that inauguration of such service shall be deferred. Nothing herein contained shall alter the provision in an Alaskan air carrier's certificate whereby the Board may require the holder, without advance notice and without hearing, to suspend indefinitely, or for some other period, further operation of any such service which may have been inaugurated.

PART 294—CANADIAN CHARTER AIR TAXI OPERATORS

Subpart A—General

Sec.

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294.89 Uplift ratio.

AUTHORITY: Sec. 204, 416; Pub. L. 85-726, as amended, 72 Stat. 743, 771, as amended by 92 Stat. 1731, 1732 (49 U.S.C. 1324, 1386).

SOURCE: ER-1257, 46 FR 52591, Oct. 27, 1981, unless otherwise noted.

Subpart A—General

§ 294.1 Applicability and purpose.

This part establishes a classification of foreign air carriers known as "Canadian charter air taxi operators," and establishes registration procedures for these carriers operating or seeking to operate transborder services between Canada and the United States. This part also exempts Canadian charter air taxi operators from certain provisions of the Federal Aviation Act, and establishes rules applicable to their operations in the United States. This part does not provide exemption from the safety regulatory provisions of the Act that are administered by the U.S. Department of Transportation through the Federal Aviation Administration (FAA), and Canadian charter air taxi operators in the conduct of their operations must observe all applicable safety standards and requirements.

§ 294.2 Definitions.

As used in this part:

(a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Agreement" means the U.S.—Canada Nonscheduled Air Services Agreement signed May 8, 1974, and any amendments, supplements, reservations, or supersessions to it.

(c) "Canadian charter air taxi operator" means a foreign air carrier that is substantially owned and effectively controlled by Canadian citizens, the Government of Canada, or both, whose foreign air transportation operations are limited to charter air service between points in Canada and points in the United States, and that does not use large aircraft in those operations.

(d) "Charter air service" means nonscheduled commercial air transportation of persons and their accompanied baggage, and of property, on a time, mileage, or trip basis where the entire planeload capacity of one or more aircraft has been engaged, or the transportation of mail by aircraft.

(e) "Large aircraft" means any aircraft that are not "small aircraft" as defined in this section.

(f) "Maximum authorized take-off weight" has the meaning assigned to it in regulations of the Canadian Transport Commission.

(g) "Maximum certificated takeoff weight" means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate. This weight may be found in the airplane operating record or in the airplane flight manual that is incorporated by regulation into the airworthiness certificate.

(h) "Maximum passenger capacity" means the maximum number of passenger seats for which an aircraft is configured.

(i) "Maximum payload capacity" means the maximum certificated takeoff weight of an aircraft less the empty weight as defined in section 03 of Part 241 of this chapter, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for weight of the crew, oil and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations, (2) oil—350 pounds, (3) fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart, assuming VFR weather conditions and flights not involving extended overwater operations. However, in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA, maximum payload capacity means the maximum zero fuel weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(j) "Small aircraft" means any aircraft designed to have both: (1) A maximum passenger capacity of not more than 30 seats or a maximum payload capacity of not more than 7,500 pounds, and (2) a maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§ 294.3 General requirements for Canadian charter air taxi operators.

A Canadian charter air taxi operator shall conduct charter air service between the United States and Canada only if it:

(a) Has been registered by the Board under this part;

(b) Does not directly or indirectly utilize large aircraft in charter air services;

(c) Has and maintains in effect liability insurance coverage that complies with the requirements set forth in Subpart E of this part and has and maintains a current certificate of insurance evidencing such coverage on file with the Board;

(d) Has and maintains in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263) and complies with all other requirements of Part 203 of this chapter.

(e) Has been designated by the Canadian Government under the Agreement;

(f) Has been granted Federal Aviation Administration operations specifications required under Part 129 of the Federal Aviation Regulations;

(g) Is substantially owned and effectively controlled by Canadian citizens, or the Government of Canada, or a combination of both; and

(h) Complies with the terms, conditions, and limitations of this part.

(The reporting requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 3024-0064.)

[ER-1257, 46 FR 52591, Oct. 27, 1981, as amended by ER-1332, 48 FR 8051, Feb. 25, 1983; ER-1342, 48 FR 31015, July 6, 1983]

Subpart B—Exemption

§ 294.10 Exemption authority.

Canadian charter air taxi operators registered under this part are exempt from the following provisions of the Act to the extent necessary to perform charter air service between the United States and Canada, and as long as they comply with the terms, conditions, and limitations of this part:

(a) Section 402 (permits).

(b) Section 404(a)(2) (carrier's duty to observe reasonable rates).

(c) Section 404(b) (discrimination).

Subpart C—Registration for Exemption

§ 294.20 Applying for registration.

To apply for registration under this part, a Canadian charter air taxi operator shall file with the Board's Bureau of International Aviation, Regulatory Affairs Division, the following:

(a) A currently effective certificate of insurance (see § 294.40); and

(b) Three copies of CAB Forms 263 and 294-A, which may be obtained from the Board's Publications Services Division, Washington, D.C. 20428. All the information required by Form 294-A shall be filled in, and it shall be certified by a responsible officer of the applicant Canadian charter air taxi operator.

(Approved by the Office of Management and Budget under control number 3024-0051)

[ER-1257, 46 FR 52591, Oct. 27, 1981; 46 FR 62054, Dec. 22, 1981, as amended by ER-1363, 48 FR 46265, Oct. 12, 1983]

§ 294.21 Procedure on receipt of registration form.

(a) The Board will list the names and addresses of all persons applying for registration under this part in its Weekly Summary of Filings.

(b) Any person objecting to the registration of a Canadian charter air taxi operator shall file an objection with the Bureau of International Aviation, Regulatory Affairs Division and serve a copy on the registrant within 28 days after the Board receives the properly completed registration application. Objections shall include any facts and arguments upon which the person relies to support its objection.

(c) Any answers to objections shall be filed within 14 days after the date that the objections were due.

(d) After receipt of CAB Form 294-A, the Board may request additional information.

(e) After the period for objections and answers has expired, the Board will take one of the following actions:

(1) Issue the registration by stamping its effective date on CAB Form 294-A and sending a copy of it to the carrier and to the FAA as evidence of registration under this part. The FAA will return its copy of Form 294-A to the Regulatory Affairs Division, Bureau of International Aviation, after the carrier has been granted FAA operations specifications under Part 129 of the Federal Aviation Regulations;

(2) Reject the application for failure to comply with this part;

(3) Issue the registration subject to such terms, conditions, or limitations as may be consistent with the public interest; or

(4) Institute evidentiary proceedings to consider whether the registration should be issued.

(f) An action described in paragraph (e) of this section will normally be taken within 60 days after the registration application is received. The Board will consider requests for faster action that include a full explanation of the need for expedited action.

(g) A registration will not become effective until the United States Government receives from the Canadian Government written designation of the registrant under the Agreement.

(h) Rejection of an application for registration will not preclude the filing of a new application by the same carrier.

§ 294.22 Notification to the Board of change in operations or identifying information.

Each Canadian charter air taxi operator shall refile three copies of CAB Form 294-A with the Board's Bureau of International Aviation, Regulatory Affairs Division, upon any of the following events. The refilings shall be mailed, or otherwise delivered, so as to be received by the Board not later than 30 days after the reported event has occurred.

(a) The carrier changes its name. When a carrier refiles Form 294-A to indicate a change of name:

(1) The registration becomes ineffective unless the Canadian Government amends the carrier's designation under the Agreement to reflect the carrier's new name within 60 days of its name change;

(2) The registrant must also refile three copies of CAB Agreement 18900 (CAB Form 263) under its new name;

(3) The registrant must also refile its certificate of insurance under its new name; and

(4) The registrant must also advise the appropriate FAA office referred to in § 294.33 of the carrier's new name;

(b) The carrier changes its designated agent.

(c) A change occurs in the carrier's ownership and control resulting in a person acquiring a beneficial or voting interest in the registrant of 10 percent or more. The name(s), address(es), citizenship(s), and percentages of ownership of the new owners shall be indicated on the form. Acquisition of ownership interest by persons who are not citizens of the country of citizenship of the registrant may invalidate the registration.

(d) The carrier temporarily or permanently ceases operations.

(Approved by the Office of Management and Budget under control number 3024-0051)

[ER-1257, 46 FR 52591, Oct. 27, 1981, as amended by ER-1363, 48 FR 46265, Oct. 12, 1983]

Subpart D—General Rules for Registrants

§ 294.30 Scope of service and equipment authorized.

(a) Upon fulfillment of the requirements of § 294.3 of this part, the registrant will have Board authority to engage in charter air services between any point or points in Canada and any point or points in the United States using small aircraft.

(b) Nothing in this part shall be construed as authorizing the operation of large aircraft in charter air service, and the exemption provided by this part to Canadian charter air taxi operators that register with the Board extends only to the direct operations of charter air service in accordance with the limitations and conditions of this part using aircraft designed to have both:

(1) A passenger capacity of no more than 30 seats or a payload capacity of no more than 7,500 pounds, and (2) an authorized takeoff weight on wheels of no more than 35,000 pounds.

(c) A Canadian charter air taxi operator shall not use large aircraft for charter air service until it has been granted a permit by the Board under section 402 of the Act or granted an exemption under section 416 of the Act. Its application for such a permit or exemption should refer to the registration under this part. Registration under this part will be canceled when a section 402 permit has been granted by the Board for the use of large aircraft in foreign charter air service.

§ 294.31 Use of business name.

(a) A Canadian charter air taxi operator, in holding out charter air service to the public and performing its charter operations, shall do so only in the names in which its registration is issued under this part. The Board may require a Canadian charter air taxi operator to change such names where they appear to be inconsistent with the public interest.

(b) Minor variations in the use of a registered name, including abbreviations, contractions, initials, letters, or other variations of the name which are readily identifiable with it, are permitted.

§ 294.32 Security arrangements for operating Public Charters.

When a Canadian charter air taxi operator performs a Public Charter under Part 380 of this chapter, either:

(a) The Canadian charter air taxi operator shall meet the bonding or escrow requirements applicable to foreign air carriers as set forth in § 212.12 of this chapter; or

(b) The Canadian charter air taxi operator shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for charter air service until after the charter has been completed, notwithstanding any provision of Part 380.

§ 294.33 Compliance with the regulations of the Federal Aviation Administration.

Registrants under this part shall obtain FAA operations specifications required under Part 129 or other applicable rules of the Federal Aviation Regulations prior to beginning operations into the United States. Registrants should write to the FAA office at one of the following addresses to obtain instructions on how to apply for FAA authority.

If the registrant's business address is located on or east of 76 degrees West Longitude (in or east of Ottawa, Ontario) it should write to: Federal Aviation Administration, General Aviation District Office No. 1, Albany County Airport, Albany, New York 12211.

If the registrant's business address is located on or east of 100 degrees West Longitude (in or east of Winnipeg, Manitoba) and west of 76 degrees West Longitude (west of, but not including, Ottawa, Ontario) it should write to: Federal Aviation Administration, Rochester General Aviation District Office, Rochester-Monroe County Airport, Rochester, New York 14624.

If the registrant's business address is west of Winnipeg, Manitoba, it should write to: Chief, Flight Standards, Federal Aviation Administration, District Office No. 61, FAA Building, King County International Airport, Seattle, Washington 98108.

§ 294.34 Advance approval by the Board.

The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the registrant under the authority granted by this part, if it finds such action to be consistent with the public interest.

Subpart E—Insurance Requirements

§ 294.40 Aircraft accident liability insurance requirements.

No Canadian charter air taxi operator shall engage in charter air service unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of Part 205 of this chapter. Evidence of such insurance coverage, in the form of a certificate of insurance, as required in Part 205 of this chapter, shall be maintained on file with the Board's Bureau of International Aviation, Regulatory Affairs Division, at all times.

(Approved by the Office of Management and Budget under control number 3024-0050)

[ER-1257, 46 FR 52591, Oct. 27, 1981, as amended by ER-1342, 48 FR 31015, July 6, 1983]

Subpart F—Cancellation of Registration and Presidential Review

§ 294.50 Cancellation, revocation, or suspension of registration.

The registration of a carrier subject to this part may be revoked, canceled, suspended, modified, or otherwise subjected to additional terms and conditions by the Board if:

(a) The carrier files with the Board a written notice that it is discontinuing operations;

(b) The carrier is the holder of a section 402 permit to perform large aircraft charters under the Agreement;

(c) Substantial ownership or effective control is acquired by persons who are not (1) citizens of Canada, (2) the Government of Canada, or (3) a combination of both;

(d) The Canadian Government withdraws the registrant's designation under the Agreement;

(e) The Agreement between the two countries is terminated;

(f) The registrant fails to have proper insurance coverage, or fails to file or keep a current insurance certificate on file with the Board;

(g) The registrant fails to comply with the terms, conditions, or limitations of this part;

(h) The carrier's operations specifications issued by the FAA are suspended or terminated;

(i) The Board finds that it is in the public interest to do so.

§ 294.51 Presidential review.

A Board order under § 294.50 (e), (g) or (i) shall be subject to stay or disapproval by the President within 60 days.

Subpart G—Authorizations and Waivers

§ 294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.

(a) Where the terms, conditions, or limitations of this part, particularly §§ 294.81, 294.82, 294.88, and 294.89, require prior approval of individual flights or charter programs, the registrant shall apply for such approval by filing three copies of CAB Form 433 with the Bureau of International Aviation, Regulatory Affairs Division. CAB Form 433 may be obtained from the Board's Publications Services Division, Washington, D.C. 20428.

(b) Action on the application for authorization filed under paragraph (a) of this section will normally be taken within 30 days after the application is filed. The Board will consider requests for faster action that include a full explanation of the need for expedited action.

§ 294.61 Waivers.

The Board upon application or on its own initiative may waive any of the provisions of this part if it finds such action to be in the public interest.

Subpart H—Violations

§ 294.70 Enforcement.

In case of any violation of any of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding under sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance; or to impose civil penalties under the provisions of section 901(a) of the Act; or in the case of a willful violation, to impose criminal penalties under the provisions of section 902(a) of the Act; or to impose other lawful sanctions, including revocation of registration.

Subpart I—Terms, Conditions, and Limitations of this Part

§ 294.80 Waiver of sovereign immunity.

By accepting an approved registration under this part, a registrant waives any right it may possess to assert any defense of sovereign immunity in any action or proceeding instituted against it in any court or other tribunal in the United States based upon any claim arising out of its operations under this part.

§ 294.81 Local traffic prohibited.

(a) Except as set forth in paragraph (b) of this section or § 294.60, a registrant shall not carry passengers, cargo, or mail between two or more United States points for compensation or hire.

(b) A registrant may grant stopover privileges at any point or points in the United States to passengers and their accompanied baggage on a flight that originates in Canada, if:

(1) The flight is operated under a contract for round-trip charter transportation that is to be provided solely by the registrant; and

(2) The same aircraft stays with the passengers throughout the journey.

§ 294.82 Third-country traffic prohibited.

Except as set forth in § 294.60, a registrant shall not engage in foreign air transportation between the United States and any point that is not in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air to or from a point not in the United States or Canada. This prohibition does not apply to passengers who are not moving as part of any group.

§ 294.83 Compliance with certain international agreements.

A registrant shall not operate any aircraft under this part unless it:

(a) Complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(b) Complies with all applicable provisions of the Agreement; and

(c) Complies with all applicable provisions of any treaty, convention, or agreement affecting international air transportation to which the United States and Canada are parties.

§ 294.84 Air competency requirements.

Registrants shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

§ 294.85 Charterworthiness standards.

(a) Registrants may perform U.S.-originating charters authorized under Annex B (III)(A) of the Agreement as follows: Commercial air transportation of passengers and their accompanied baggage, and of property, on a time, mileage, or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group, or other small aircraft operations as may be authorized under any amendments, supplements, reservations, or supersessions of the Agreement.

(b) Registrants may perform Canadian-originating charters authorized by Annex B (III)(B) of the Agreement and any amendments, supplements, reservations or supersessions of it. Such charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft.

§ 294.86 Industrial/agricultural/other nontransport air operations prohibited.

A registrant shall not engage in flights for the purpose of industrial or agricultural operations (e.g., crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, aerial photography) within the United States unless it has obtained a permit from the Board under Part 375 of this chapter.

§ 294.87 Compliance with Canadian licenses.

A registrant shall not, in the performance of operations authorized by this part, use any aircraft or conduct any operations except in accordance with the authority and conditions contained in the registrant's applicable Canadian licenses.

§ 294.88 Northwest Ontario restriction.

(a) Except as set forth in § 294.60 or paragraph (b) of this section, registrants shall not engage in the carriage of persons in foreign air transportation between the United States and Canada to or from a point in Ontario, west of a line drawn due north from Blind River, Ontario (46° 11′ North Latitude, 82° 58′ West Longitude) and extending to the border between Ontario and Manitoba, unless:

(1) The point is a resort, camp, or outpost operated by a person duly licensed for such purpose by the Government of the Province of Ontario, or the licensed base of a Canadian charter air carrier, or a Canadian Customs port of entry;

(2) The registrant is required on each flight out of the restricted area to make a stop at a Canadian Customs port of entry or at the licensed base of a Canadian charter air carrier where officers of the Ontario Ministry of Natural Resources may be available to make such inspection as they consider desirable; and

(3) The registrant has available on its aircraft for inspection by the U.S. authorities satisfactory evidence that it has complied with these conditions.

(b) The prohibition set forth in paragraph (a) of this section does not apply to flights performed for medical evacuation or similar emergencies.

(c) A registrant shall clearly notify in writing all persons who contract for the registrant's service, and are affected by the restrictions of this section, of the limitations set forth in paragraph (a) of this section.

§ 294.89 Uplift ratio.

Except as set forth in § 294.60, the aggregate number of all United States-originating charter flights performed by a registrant on or after May 8, 1974, shall not, at the end of any calendar quarter, exceed by more than one-third the aggregate number of all Canadian-originating charter flights performed by the registrant on or after May 8, 1974. For the purpose of making such computation, the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter is one-way, round trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (1) "small aircraft" flights of persons; and (2) "small aircraft" flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the registrant is the lessee, and shall not be included if the registrant is the lessor.

(d) There shall be excluded from the computation:

(1) Flights with aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(2) Flights originating at a United States terminal point on a route listed in the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder. These flights may be excluded from the computation only if, pursuant to any such agreement, the registrant also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over that route, and provides some scheduled service on any route pursuant to any such agreement, and such flights serve either (i) a Canadian terminal point on such route, or (ii) any Canadian intermediate point authorized for service on the route by the foreign air carrier permit.

PART 296—INDIRECT AIR TRANSPORTATION OF PROPERTY

Subpart A—General

Sec.
296.1 Purpose.
296.2 Applicability.
296.3 Indirect cargo air carrier.
296.4 Joint loading.
296.5 Agency relationships.
296.6 Public disclosure of cargo liability limits and insurance.

Subpart B—Exemption for Indirect Air Transportation of Property

296.10 Exemption from the Act.

Sec.

Subpart C—Violations

296.20 Enforcement.

AUTHORITY: Secs. 101, 102, 204, 408, 409, and 416, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 767, 768, 771, 49 U.S.C. 1301, 1302, 1324, 1378, 1379, 1386.

SOURCE: ER-1261, 46 FR 54727, Nov. 4, 1981, unless otherwise noted.

Subpart A—General

§ 296.1 Purpose.

This part establishes rules for the indirect air transportation of property. It creates a class of air carriers to provide this air transportation and grants exemptions from certain provisions of the Federal Aviation Act.

§ 296.2 Applicability.

This part applies to air transportation of property by indirect cargo air carriers, and to persons entering into control relationships with indirect cargo air carriers.

§ 269.3 Indirect cargo air carrier.

An indirect cargo air carrier is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, order, or permit issued by the Board, or the services of its agent, or of another indirect cargo air carrier.

§ 296.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 296.5 Agency relationships.

An indirect cargo air carrier may act as agent of a shipper, or of a direct air carrier that has authorized such agency, rather than as an air carrier, if it expressly reserves the option to do so when the shipment is accepted.

§ 296.6 Public disclosure of cargo liability limits and insurance.

Every indirect cargo air carrier shall give notice in writing to the shipper, when any shipment is accepted, of the existence or absence of cargo liability accident insurance, and of the limits on the extent of its liability, if any. The notice shall be clear and conspicuously included on or attached to all of its rate sheets and airwaybills.

Subpart B—Exemption for Indirect Air Transportation of Property

§ 296.10 Exemption from the Act.

(a) Indirect cargo air carriers are exempted from the provisions of Title IV of the Act only if and so long as they comply with the provisions of this part and its conditions, and to the extent necessary to permit them to organize and arrange their air freight shipments to provide indirect air transportation, except for the following sections:

(1) Subsection 403(b)(2) (solicitation of rebates). However, indirect cargo air carriers are exempt from section 403(b)(2) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers.

(2) Section 404(a) to the extent required to provide safe service, equipment, and facilities in connection with air transportation.

(3) Subsection 404(b) (nondiscrimination) with respect to foreign air transportation.

(4) Section 407(a) (accounts, records, and reports) and 407(e) (inspection of accounts and property);

(5) Section 411 (unfair or deceptive practices or methods of competition);

(6) Section 413 (form of control); and

(7) Section 415 (inquiry into air carrier management).

(b)—(c) [Reserved]

(d) Direct air carriers are exempted from section 403 of the Act to the extent necessary to permit them to pay, directly or indirectly, fees to indirect cargo air carriers.

[ER-1261, 46 FR 54727, Nov. 4, 1981, as amended by ER-1335, 48 FR 22705, May 20, 1983; ER-1381, 49 FR 25226, June 20, 1984, 50 FR 31142, July 31, 1985]

Subpart C—Violations

§ 296.20 Enforcement.

In case of any violation of any of the provisions of the Act, or of this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding under section 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of section 901(a) of the Act, or other lawful sanctions.

PART 297—FOREIGN AIR FREIGHT FORWARDERS AND FOREIGN COOPERATIVE SHIPPERS ASSOCIATIONS

Subpart A—General

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297.1 Purpose.
297.2 Applicability.
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297.4 Joint loading.
297.5 Foreign air freight forwarder as agent.
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Subpart B—Exemption for Foreign Indirect Air Transportation of Property

297.10 Exemption from the Act.
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Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

297.20 Filing for registration.
297.21 Objections to registration application.
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297.24 Notification to the Board of change of operations.
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Subpart D—General Rules for Foreign Indirect Air Carriers

297.30 Public disclosure of cargo liability insurance.
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297.31 Preparation of airwaybills and manifests.

Subpart E—[Reserved]

Subpart F—Violations

297.50 Enforcement.

AUTHORITY: Secs. 204, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 92 Stat. 1731, 1732 (49 U.S.C. 1324, 1386).

SOURCE: ER-1159, 44 FR 69635, Dec. 4, 1979, unless otherwise noted.

Subpart A—General

§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in interstate, overseas, or foreign air transportation of property. It relieves these carriers from certain provisions of the Act, and establishes simplified reports for them.

[ER-1294, 47 FR 19684, May 7, 1982]

§ 297.2 Applicability.

This part applies to interstate and overseas air transportation of property and to foreign air transportation of property outbound from the United States by foreign indirect air carriers. It also applies to applications for registration as a foreign indirect air carrier of property.

[ER-1294, 47 FR 19684, May 7, 1982]

§ 297.3 Definitions.

For purpose of this part:

(a) "Foreign air freight forwarder" means a foreign indirect air carrier that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of another foreign air freight forwarder, or of an air freight forwarder registered under Part 296.

(b) "Foreign cooperative shippers association" means a bona fide association of shippers operating as a foreign indirect air carrier on a nonprofit basis that undertakes to ship property by air for the account of such association or its members, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of a foreign air freight forwarder, or of an air freight forwarder registered under Part 296.

(c) "Direct air carrier" means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, or permit issued by the Board.

(d) "Foreign indirect air carrier" means any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 19684, May 7, 1982]

§ 297.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 297.5 Foreign air freight forwarder as agent.

A foreign air freight forwarder may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A foreign air freight forwarder shall not act as the agent of any direct air carrier with respect to shipments accepted for forwarding.

§ 297.6 Foreign cooperative shippers association as agent.

A foreign cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

[ER-1235, 46 FR 38496, July 28, 1981]

Subpart B—Exemption for Foreign Indirect Air Transportation of Property

§ 297.10 Exemption from the Act.

(a) Foreign indirect air carriers with an effective registration under this part are exempted from the following provisions of the Act only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to arrange their air freight shipments:

(1) Section 402 (Permits);

(2) Section 403(a) and 403(b)(1) (Tariffs);

(3) Section 403(b)(2) (Solicitation of rebates) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers;

(4) Subsection 404(a)(2) (Carrier's duty to establish just and reasonable rates, etc.); and

(5) If awarded interstate or overseas air transportation operating rights, any other provision of the Act that would otherwise prohibit them from engaging in the intersttate or overseas indirect air transportation of property.

(6) Subsection 404(b) (nondiscrimination) with respect to interstate and overseas air transportation.

(b) Direct air carriers are exempted from section 403 of the Act to the extent necessary to permit them to pay, directly or indirectly, fees to foreign air freight forwarders and foreign cooperative shippers associations on consolidated shipments.

[ER-1336, 48 FR 22705, May 20, 1983, as amended by ER-1382, 49 FR 25226, June 20, 1984]

§ 297.11 Disclaimer of jurisdiction.

The Board declines to exercise its jurisdiction over foreign indirect air carriers of property with respect to shipments that originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign indirect air carrier of property at any time it finds that such action is in the public interest.

§ 297.12 General requirements.

(a) The direct air transportation provided must be performed by direct air carriers that hold authority under section 401, 402, 416 or 418 of the Act or are operating under Part 298 of this chapter;

(b) Only U.S. citizen direct air carriers may provide direct air transportation operations in interstate and overseas air transportation.

(c) Foreign indirect air carriers that hold authority to engage in foreign air transportation must apply additionally for permission to consolidate freight in interstate and overseas air transportation.

[ER-1294, 47 FR 19684, May 7, 1982]

Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

§ 297.20 Filing for registration.

(a) Not later than 60 days before the start of operations as a foreign indirect air carrier, every foreign air freight forwarder and foreign cooperative shippers association shall apply for registration with the Board, unless upon a showing of good cause, the Director, Bureau of International Aviation, allows application at a later time.

(b) Application shall consist of filing with the Board's Bureau of International Aviation, Regulatory Affairs Division, two copies of completed Form 297A, which may be obtained from the Civil Aeronautics Board, Publications Services Division, Washington, D.C. 20428.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1265, 46 FR 56602, Nov. 18, 1981]

§ 297.21 Objections to registration application.

Persons objecting to registration by a foreign air freight forwarder or foreign cooperative shippers association shall file their objections with the Bureau of International Aviation, Regulatory Affairs Division, within 28 days of the filing date of the registration forms. The Board will list the names and nationality of all persons applying for registration in its Weekly Summary of Filings.

§ 297.22 Procedure on receipt of registration application.

After review of a registration form filed under § 297.20, the Board will take one or more of the following actions:

(a) Indicate by stamp on CAB Form 297A the effective date of registration, and return to the carrier the duplicate copy of Form 297A as evidence of registration with the Board under this part;

(b) Reject an application for registration for failure to comply with this part, for reasons relating to the failure of effective reciprocity, or if the Board finds that it is in the public interest to do so.

(c) Request additional information from the applicant;

(d) Issue an order subjecting a carrier's exercise of authority under this part to such terms, conditions, or limitations as may be required by the public interest; or

(e) Institute a proceeding under section 402 of the Act.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 19685, May 7, 1982]

§ 297.23 Waiver of sovereign immunity.

By accepting an approval registration form under this part, a carrier waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the carrier in any court or other tribunal in the United States based upon any claim arising out of operations by the carrier under this part.

§ 297.24 Notification to the Board of change of operations.

(a) Not later than 30 days before any change in its name or address or any temporary or permanent cessation of operations, each foreign indirect air carrier shall notify the Board's Bureau of International Aviation, Regulatory Affairs Division, of the change by resubmitting CAB Form 297A.

(b) The registrant shall apply for an amendment of its registration not later than 30 days after any person listed on its existing registration as owning or holding beneficial ownership of 10 percent or more of the registrant's stock no longer has an interest of 10 percent or more, or after any person not so listed becomes an owner or holder of 10 percent or more. Application for amendment shall be made by resubmitting CAB Form 297A, but the existing registration shall remain valid pending Board action on the amendment.

§ 297.25 Cancellation or conditioning of registration.

The registration of a foreign indirect air carrier may be canceled or subjected to additional terms, conditions or limitations if:

(a) It files with the Board a written notice that it is discontinuing foreign indirect air carrier activities;

(b) It fails to perform air transportation services as authorized;

(c) It fails to file the reports required by this part;

(d) A substantial ownership or control interest is acquired by persons who are not citizens of the country of citizenship of the registrant;

(e) There is a failure of effective reciprocity; or

(f) The Board finds that it is in the public interest to do so.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 19685, May 7, 1982]

Subpart D—General Rules for Foreign Indirect Air Carriers

§ 297.30 Public disclosure of cargo liability insurance.

Every foreign air freight forwarder shall give notice in writing to the shipper, when any shipment is accepted, of the limits of its cargo liability insurance, or of the absence of such insurance, and the limits of its liability, if any. The notice shall be included clearly and conspicuously on all of its rate sheets and airwaybills, and on any other documentation that is given to a shipper at the time of acceptance of the shipment.

§ 297.31 Preparation of airwaybills and manifests.

(a) Each registered foreign indirect air carrier shall prepare an accurate airwaybill describing completely all services rendered to or on behalf of the shipper, including the conditions under which the contract will be completed, in its capacity as a foreign indirect air carrier. A copy of the airwaybill shall be given to the consignor and to the consignee.

(b) Each registered foreign indirect air carrier shall prepare an accurate manifest showing every individual shipment included in each shipment consigned for transportation to a direct air carrier.

(c) A waiver of paragraph (a) of this section may be granted by the Board upon a written application by the foreign indirect air carrier not less than 30 days before the shipment to which it relates is transported, if the waiver is in the public interest, and is warranted by special or unusual circumstances.

Subpart E—[Reserved]

Subpart F—Violations

§ 297.50 Enforcement.

In case of any violation of any of the provisions of the Act, or this part, or any other rule, regulation or order issued under the Act, the violator may be subject to a proceeding under sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel to compliance; or to civil penalties under the provisions of section 901(a) of the Act; or in the case of willful violation, to criminal penalties under the provisions of section 902(a) of the Act; or other lawful sanctions including cancellation of registration.

PART 298—EXEMPTIONS FOR AIR TAXI OPERATIONS

Subpart A—General

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298.2 Definitions.
298.3 Classification.
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298.34 Limitations on air taxi service in Alaska.
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298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.
298.66 Reporting exemption for State collection of data.

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298.80 Enforcement.

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298.90 Exemption for certificated carriers.
298.91 No exemption from section 407.
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298.93 Through service options.
298.94 Joint fares and 90-day notice of service modifications, suspensions or terminations.
298.95 Baggage liability.
298.96 [Reserved]
298.97 Carriage of mail.
298.98 Use of name.
298.99 [Reserved]
298.100 Liability insurance.

AUTHORITY: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771, 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

SOURCE: ER-929, 40 FR 42855, Sept. 17, 1975, unless otherwise noted.

Subpart A—General

§ 298.1 Applicability of part.

This part establishes a classification of air carriers known as "air taxi operators," provides certain exemptions to them from some of the economic regulatory provisions of Title IV of the Federal Aviation Act and specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in air transportation in all States, Territories and possessions of the United States.[1] This

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[1] Section 401(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1371(a), prohibits any person from engaging in "air transportation" except to the extent that such person is authorized to do so by the Civil Aeronautics Board or other Federal statute.

Air transportation is defined in the Act (see section 101 (10) and (21), 49 U.S.C. 1301) to include the carriage by aircraft of persons or property as a common carrier for compensation or hire. This includes carriage by aircraft as a common carrier between places in the same State (a) through airspace outside that State (over other States

Continued

part also authorizes certificated carriers to provide service with small aircraft as if they were air taxi operators and establishes reporting requirements for small certificated air carriers.

[ER-1399, 50 FR 19, Jan. 2, 1985]

§ 298.2 Definitions.

As used in this part:

(a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Air taxi operator" means an air carrier coming within the classification of "air taxi operators" established by § 298.3.

(c) "Air Transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft as defined by the Act.

(d) "Aircraft-hours" means the airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight stage.

(e) "Aircraft miles" means the miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern.

(e-1) "All-cargo air service carrier" means an air carrier holding a certificate issued under section 413 of the Act.

(e-2) "Certificated carrier" means an air carrier holding a certificate issued under section 401 of the Act.

(f) "Commuter air carrier" means an air taxi operator that carries passengers on at least five round tips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(g) "Departure" means takeoff from an airport.

(h) "Flight stage" means the operation of an aircraft from takeoff to landing.

(i) "Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(j) "Maximum certificated takeoff weight" means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.[2]

(k) "Maximum passenger capacity" means the maximum number of passenger seats for which an aircraft is configured.

(l) "Maximum payload capacity" means the maximum certificated takeoff weight of an aircraft, less the empty weight,[3] less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part,

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or the District of Columbia or the open sea or foreign territory) or (b) where such carriage is part of the movement of the passengers or property carried, in interstate, overseas or foreign air commerce. However, operations wholly within the geographic limits of a single State are not considered "air transportation" if in those operations the carrier transports no more than a *de minimis* volume of passengers or property moving as part of a continuous journey to or from a point outside the State. For a further discussion of what constitutes air transportation see the preamble to ER-574, 34 FR 7124.

Air transportation also is defined to include "the carriage of mail by aircraft. "Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

This part does not provide exemption from the safety regulatory provisions of the Act which are administered by the Department of Transportation through the Federal Aviation Administration, and air taxi operators in the conduct of their operations must observe all applicable safety standards and requirements.

[2] This weight may be found in the airplane operating record or in the airplane flight manual which is incorporated by regulation into the airworthiness certificate.

[3] Empty weight is defined in section 03 of Part 241 as follows: "the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid."

the allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations,

(2) Oil—350 pounds,

(3) Fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart,[4]

Provided, however, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,[5] maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(m) "Mile" means a statute mile, i.e., 5,280 feet.

(n) "On-line origin-destination" means the points at which a passenger enters and leaves the system of an air carrier on a one-way trip or on each of the directional parts of a round, circle, or open-jaw trip, ignoring intermediate points of intra-line transfer.

(o) "Passengers carried" means passengers on board each flight stage.

(p) "Point" when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the continental United States, except Alaska, it shall have the same meaning except be limited to the area within a 3-mile radius of such airport or place: *Provided,* That for the purposes of this part, West 30th Street Heliport and Pan Am Building Heliport, both located in New York City, shall be regarded as separate points.

(q) "Revenue passenger-mile" means one revenue passenger transported one mile. Revenue passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

(r) "Revenue seat-miles available" means the aircraft-miles flown on each flight stage multiplied by the number of seats available for sale on that flight stage.

(s) "Revenue ton-mile" means one ton of revenue traffic transported one mile. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pound-miles by 2,000 pounds.

(t) "Revenue ton-miles available" means the aircraft-miles flown on each flight stage multiplied by the number of pounds of aircraft capacity available for use on that stage and converted to ton-miles by dividing total pound-miles available by 2,000 pounds.

(u) "Scheduled service" means transport service operated over routes pursuant to published flight schedules or pursuant to mail contracts with the U.S. Postal Service.

(v) "Small aircraft" means any aircraft that is not a large aircraft, as defined in this section.

(w) "Ton" means a short ton, i.e., 2,000 pounds.

(x) "Small certificated air carrier" means an air carrier holding a certificate issued under section 401 of the Act that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands with small aircraft as defined in this section.

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-957, 41 FR 28512, July 12, 1976; ER-1039, 43 FR 1490, Jan. 10, 1978; ER-1123, 44 FR 30083, May 24, 1979; ER-1251, 46 FR 51374, Oct. 20, 1981; ER-1251, 46 FR 53023, Oct. 28, 1981; ER-1278, 47 FR 608, Jan. 6, 1982; ER-1289, 47 FR 12949, Mar. 26, 1982; ER-1399, 50 FR 19, Jan. 2, 1985]

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[4] Assumes VFR weather conditions and flights not involving extended overwater operations.

[5] The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

§ 298.3 Classification.

(a) There is hereby established a classification of air carriers, designated as "air taxi operators," which directly engage in the air transportation of persons or property or mail or in any combination of such transportation and which:

(1) Except as provided in § 298.5, do not directly or indirectly utilize large aircraft in air transportation;

(2) Except as provided in § 298.5, do not hold a certificate of public convenience and necessity or economic authority issued by the Board other than that provided by this part;

(3) Have registered with the Board in accordance with Subpart C of this part;

(4) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in Subpart E of this part and have and maintain a current certificate of insurance evidencing such coverage on file with the Board; and

(5) If operating as a commuter air carrier or in foreign air transportation or participating in an interline agreement, have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263 or CAB Form 298-A (Rev.)) and comply with all other requirements of Part 203 of this chapter.

(b) Except as provided in § 298.5, a person who does not observe the conditions set forth in paragraph (a) of this section shall not be an air taxi operator within the meaning of this part with respect to any operations conducted while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-1039, 43 FR 1490, Jan. 10, 1978; ER-1213, 46 FR 12478, Feb. 17, 1981; ER-1333, 48 FR 8051, Feb. 25, 1983]

§ 298.4 Requests for statement of authority.

In any instance where an air taxi operator is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Secretary of the Board will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.

§ 298.5 Dual operations—air taxi and all-cargo air service.

On or after January 9, 1978, any person having or obtaining authority to operate as an all-cargo air service carrier shall not thereby lose, or be disqualified from obtaining, authority under this part to engage also in operations as an air taxi operator, regardless of the size of aircraft utilized in such all-cargo air service operations. The operations which such person conducts as an air taxi operator shall be subject to the conditions and entitled to the exemptions set forth in this part, and the operations which he conducts as an all-cargo air service carrier shall be subject to the conditions and entitled to the exemptions set forth in Part 291 of this chapter.

[ER-1039, 43 FR 1490, Jan. 10, 1978]

Subpart B—Exemptions

§ 298.11 Exemption authority.

Air taxi operators are hereby relieved from the following provisions of Title IV of the Act only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi operations:

(a) Section 401(a);

(b) Section 403; except that the requirements of that section shall apply to: (1) Tariffs for through rates, fares, and charges filed jointly by air taxi operators with air carriers or with foreign air carriers subject to the tariff-filing requirements of section 403 of the Act; and (2) Tariffs required to be filed by air taxi operators which embody the provisions of the counterpart to CAB Agreement 18900 as specified in Subpart G of this part;

(c) Section 404(a), except for the requirements that air taxi operators shall:

(1) Provide safe service, equipment, and facilities in connection with air transportation;

(2) Provide adequate service insofar as that requires them to comply with Parts 252 and 382 of this chapter;

(3) Observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations and practices as provided in tariffs filed jointly by air taxi operators with certificated air carriers or with foreign air carriers; and

(4) Establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

(d) Section 404(b), except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators with air carriers or with foreign air carriers and to transportation of the handicapped to the extent that that is required by Part 382 of this chapter;

(e) Section 405(b);

(f) Sections 407 (b), (c), and (d).

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-1251, 46 FR 51374, Oct. 20, 1981; ER-1278, 47 FR 608, Jan. 6, 1982; ER-1295, 47 FR 25936, June 16, 1982; ER-1389, 50 FR 31142, July 31, 1985]

§ 298.12 [Reserved]

§ 298.13 Duration of exemption.

The exemption from any provision of Title IV of the Act provided by this part shall continue in effect only until such time as the Board shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (*e.g.,* limited-entry foreign air transportation market) subject to the finding.

[ER-1278, 47 FR 608, Jan. 6, 1982]

Subpart C—Registration and Reregistration for Exemption

§ 298.21 Filing for registration by air taxi operators.

(a) Every air taxi operator (whether or not he is also a commuter air carrier as defined in this part) who plans to commence operations under this part shall register with the Board not later than 30 days prior to the commencement of such operations, unless, upon a showing of good cause satisfactory to the Director of the Bureau of Pricing and Domestic Aviation, registration within a lesser period of time is allowed.

(b) The registration of an air taxi operator shall remain in effect until it is amended by the carrier or canceled by the Board.

(c) Registration shall be accomplished by a filing with the Board's Bureau of Domestic Aviation, except for air taxi operators with a mailing address in the State of Alaska who shall file with the Board's Field Office, Box 27, Anchorage, Alaska, 99513, the following:

(1) CAB Form 298-A, "Air Taxi Operator and Commuter Air Carrier Registration and Amendments Under Part 298 of the Economic Regulations of the Civil Aeronautics Board" executed in duplicate.[6] This form shall be certified by a responsible official and shall include the following information:

(i) The name of the carrier and its mailing address;

(ii) The carrier's principal place of business, if different from its mailing address, and its area code and telephone number;

(iii) The carrier's FAA certificate number, if any, and the address and telephone number of the carrier's local FAA office;

(iv) The type of service the carrier will offer (scheduled passenger, scheduled cargo, mail under a United States Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations);

(v) A list of the aircraft that the carrier proposes to operate, or, in the case of an amendment to the registration, the aircraft that it is currently operating in its air taxi operations, and the aircraft type, FAA registration number and passenger capacity of each aircraft;

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[6] CAB Form 298-A is filed as part of the original document and can be obtained from the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.

(vi) For initial registration, the proposed date of commencement of air taxi operations;

(vii) For amendments, whether the carrier has carried passengers in foreign air transportation during the previous 12 months;

(viii) Whether the carrier is a United States citizen;

(2) A certificate of insurance which is currently effective (or in case of initial registration, is to become effective), as defined in § 298.41(b);

(3) An 8 (in the case of commuters, 670) dollar registration filing fee in the form of a check, draft, or postal money order payable to the Civil Aeronautics Board.

(4) For air taxi operators that (i) are commuter air carriers, (ii) engage in foreign air transportation, or (iii) participate in an interline agreement, a signed counterpart of CAB Agreement 18900 (CAB Form 263), which may be the revised registration form (CAB Form 298-A (Rev.)), as required by Part 203 of this chapter. These forms can be obtained from the Publication Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(d) No air carrier, except a commuter air carrier providing scheduled passenger service that registered with the Board on or before February 25, 1981, shall provide scheduled passenger service at an eligible point until it has been found fit, willing, and able to conduct such service by the Board. A commuter air carrier that registered with the Board on or before February 25, 1981 and that is providing scheduled passenger service may continue such service or commence new service at an eligible point while the Board makes its fitness findings. If the Board finds a commuter air carrier not to be fit, willing, and able to serve an eligible point the carrier shall not conduct such service.

(The reporting requirements contained in paragraph (c)(2) were approved by the Office of Management and Budget under control number 3024-0007. The reporting requirements contained in paragraph (c)(1) were approved under control number 3024-0008. The reporting requirements contained in paragraph (c)(4) were approved under control number 3024-0064.)

[ER-929, 40 FR 42855, Sept. 17, 1975, as amended by ER-954, 41 FR 25890, June 23, 1976; 41 FR 27314, July 2, 1976; 41 FR 28786, July 13, 1976; ER-1208, 46 FR 8444, Jan. 27, 1981; ER-1213, 46 FR 12478, Feb. 17, 1981; ER-1318, 48 FR 3718, Jan. 27, 1983; ER-1333, 48 FR 8051, Feb. 25, 1983; 49 FR 28240, July 11, 1984]

§ 298.22 Processing by the Board.

After examination of the Form 298-A submitted by the carrier, the Board will stamp the effective date of the registration on the form and retrun the duplicate copy to the carrier to confirm that it has registered with the Board as required by this part. The effective date of the registration shall not be earlier than the effective date of the insurance policy or policies named in the certificate of insurance filed by the carrier under § 298.21(c)(2).

[ER-1213, 46 FR 12478, Feb. 17, 1981]

§ 298.23 Notifications to the Board of change in operations.

(a) An air taxi operator shall submit an amendment to its registration not later than 30 days after any of the following events:

(1) A change in its name or address;

(2) A change in its type of operations (passenger, cargo, mail, scheduled, etc.);

(3) A temporary or permanent cessation of its operations; or

(4) A change in the type of aircraft operated.

(b) An amendment shall be made by resubmitting CAB Form 298-A to the Board's Bureau of Domestic Aviation. If the air taxi operator has a mailing address in the State of Alaska, the form shall be mailed to the Board's Field Office, Box 27, Anchorage, Alaska 99513.

(The reporting requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024-0008.)

[ER-1213, 46 FR 12478, Feb. 17, 1981, as amended at 49 FR 28240, July 11, 1984]

§ 298.24 Cancellation of the registration.

The registration of an air taxi operator may be canceled by the Board if any of the following occur:

(a) The operator notifies the Board that it is ceasing operations;

(b) The operator's insurance coverage changes or lapses;

(c) The operator fails to file an amended registration when required by § 298.23;

(d) The operator's operating authorization is revoked by the Federal Aviation Administration;

(e) In the case of a commuter air carrier, the Board finds that the carrier is not fit, willing, and able to conduct scheduled service.

[ER-1213, 46 FR 12478, Feb. 17, 1981]

Subpart D—Limitations and Conditions on Exemptions and Operations

§ 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi's policy on baggage liability and denied boarding compensation.

(b) An air taxi shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 254.5 of this chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

(Approved by the Office of Management and Budget under control number 3024-0074)

[ER-1378, 49 FR 14086, Apr. 10, 1984, as amended at 49 FR 28240, July 11, 1984]

§ 298.31 Scope of service and equipment authorized.

Nothing in this part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators that register with the Board extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

[ER-1213, 46 FR 12478, Feb. 17, 1981]

§§ 298.32—298.33 [Reserved]

§ 298.34 Limitations on air taxi service in Alaska.

An air taxi operator shall not provide or offer to provide air transportation between points both of which are in the State of Alaska, or one of which is in Alaska and the other in Canada, unless the air taxi operator also holds authority from the State of Alaska.

[ER-1123, 44 FR 30083, May 24, 1979]

§ 298.35 Limitations on carriage of mail.

An air taxi operator is not authorized to carry mail except pursuant to contract with the Postal Service entered into pursuant to sections 5402(b) or 5402(c) of the Postal Reorganization Act (39 U.S.C. 5402): *Provided, however,* That within the 48 contiguous States, Alaska and Hawaii:

(a) An air taxi operator who was authorized, on April 2, 1973, to carry mail at a final mail rate then in effect, shall continue to have authority under this part to carry mail, but only at such final mail rate; and

(b) An air taxi operator who was authorized, on April 2, 1973, to carry mail at a temporary mail rate approved by the Board pending determination of a final mail rate in a proceeding which was then pending, shall continue to have authority under this part to carry mail, but only at such temporary mail rate or other temporary mail rate as may be approved from time to time by the Board until completion of such pending proceeding, and, thereafter, only at such final mail rate as shall have been fixed by order of the Board in such proceeding.

§ 298.36 Limitation on use of business name.

(a) An air taxi operator in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier operating certificate is issued pursuant to section 604 of the Act by the Federal Aviation Administration: *Provided*, That the Board may require an air taxi operator to change such name or names where they appear contrary to the public interest.

(b) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(c) Neither the provisions of this section nor the grant of a permission hereunder shall be deemed to constitute a finding for purposes other than for this section, or to effect a waiver of, or exemption from, any provisions of the Act or orders, rules or regulations issued thereunder.

§ 298.37 Prohibition of services not covered by insurance.

An air taxi operator shall not operate in air transportation or provide or offer to provide air transportation unless there is in effect liability insurance which covers such transportation and which is evidenced by a current certificate of insurance on file with the Board as required by Subpart E.

§ 298.38 Security arrangements for operating Public Charters.

When an air taxi operator performs a Public Charter under Part 380 of this chapter, either:

(a) The air taxi operator shall meet the bonding or escrow requirements applicable to certificated carriers as set forth in § 207.17 of this chapter; or

(b) The air taxi operator shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for air transportation until after the charter has been completed, notwithstanding any provision of Part 380.

[ER-1140, 44 FR 49444, Aug. 23, 1979]

Subpart E—Liability Insurance Requirements

§ 298.41 Basic requirements.

(a) Each air taxi operator, other than one classified as a commuter air carrier under § 298.2(f), engaging in air transportation shall maintain in effect aircraft accident liability insurance coverage that complies with the requirements of this subpart and is evidenced by a currently effective policy of insurance, with an attached standard endorsement, available for inspection by the Board and the public at its principal place of business. Each commuter air carrier engaging in air transportation shall maintain in effect aircraft accident liability insurance coverage that meets the requirements of Part 205 of this chapter. Evidence of such insurance coverage in the form of a certificate of insurance shall be maintained on file at the Board at all times.

(b) A certificate of insurance is one or more certificates evidencing issuance by one or more insurers of one or more currently effective policies of aircraft liability insurance in compliance with this subpart and properly endorsed, which alone or in combination provide the minimum coverage prescribed in § 298.42: *Provided*, That, where a certificate of insurance accompanies a filing for initial registration as an air taxi operator in accordance with § 298.21, the insurance policy or policies named in such certificate shall become effective no later than the proposed date of commencement of air taxi operations as shown in the carrier's registration form. When more than one insurer is involved in providing the minimum coverage prescribed herein, the limits and types of liability assumed by each insurer shall be clearly stated in the certificate of insurance. The certificate of insurance shall also state whether the policy of insurance provides coverage for liability for bodily injury to, or death of, aircraft passengers. In addition, the certificate of insurance shall list the types or classes of aircraft, or the specific aircraft by Federal Aviation Administration (FAA) registration number, with respect to which the policy of insurance applies and shall set forth the area or areas of operation as found in the operations specifications issued by the FAA in conjunction with the applicable ATCO certificate: *Provided, however,* That if one or more of the 48 contiguous States or the District of Columbia is listed in such operations specifications, then all 48 contiguous States and the District of Columbia must be included in the coverage of insurance. Each certificate of insurance, and each endorsement limiting the permitted exclusions, shall be signed in ink by an authorized officer or agent of the insurer and shall be on forms prescribed and furnished by the Board.[7]

(c) The insurance coverage and certificate required by this subpart shall be obtained from one or more (1) reputable and financially responsible insurance companies or associations which are licensed to issue aircraft liability policies in any State in the United States or in the District of Columbia, or (2) surplus line insurers named on a current list of approved surplus line insurers promulgated by the insurance regulatory authority of any State in the United States or in the District of Columbia: *Provided,* That if any such surplus line insurer provides more than ten percent (10 percent) of the liability insurance coverage of an air taxi operator required by this subpart, it shall maintain, in a bank or other financial institution organized or operating under the laws of the United States or a State thereof or the District of Columbia, a trust fund of at least three hundred thousand dollars ($300,000) for the benefit of its policyholders.

(d) Endorsements that add previously unlisted aircraft, or aircraft types or classes, to coverage or that delete such listed aircraft, or types or classes, from coverage shall be filed with the Board not more than thirty (30) days after the effective date of such endorsement: *Provided, however,* That aircraft shall not be listed in the carrier's operations specifications with the Federal Aviation Administration and shall not be operated unless liability insurance coverage has attached.

[ER-929, 40 FR 42860, Sept. 17, 1975, as amended by ER-1289, 47 FR 12949, Mar. 26, 1982]

§ 298.42 Minimum limits of liability.

(a) The minimum limits of liability coverage maintained by an air taxi operator who carries passengers in air transportation shall be:

(1) *Liability for bodily injury to or death of aircraft passengers.* A limit for any one passenger of at least seventy-five thousand dollars ($75,000), and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying seventy-five thousand dollars ($75,000) by seventy-five percent (75 percent) of the total number of passenger seats installed in the aircraft.

(2) *Liability for bodily injury to or death of persons (excluding passengers).* A limit of at least seventy-five thousand dollars ($75,000) for any one person in any one occurrence, and a limit of at least three hundred thousand dollars ($300,000) for each occurrence.

(3) *Liability for loss of or damage to property.* A limit of at least one hundred thousand dollars ($100,000) for each occurrence.

(b) The minimum limits of liability coverage maintained by an air taxi operator who restricts his operations in air transportation to the carriage of mail or property, or both, shall be those specified in paragraphs (a) (2) and (3) of this section.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, an air taxi operator may be insured for a single limit of liability for each occurrence. In that event, coverage must be equal to or greater than the combined required minimums for bodily injury, property damage, and/

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[7] CAB Forms 257 (rev. 10-70) and 262 (rev. 6-70) are filed as part of the original document and can be obtained from the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.

or passenger liability for the type of use to which such aircraft is put, as the case may be.[8]

(d) In the case of a single limit of liability, aircraft may be insured by a combination of primary and excess policies. Such policies must have combined coverage equal to or greater than the required minimums for bodily injury to nonpassengers, property damage, and/or passenger liability for the type of use to which the aircraft is put, as the case may be.

[ER-929, 40 FR 42860, Sept. 17, 1975; 40 FR 48122, Oct. 14, 1975]

§ 298.43 Terms and conditions of insurance coverage.

Liability insurance coverage required by this part shall meet the following minimum requirements:

(a) Insurance contracts shall provide for payment by the insurer on behalf of the insured air taxi operator, within the specified limits of liability, of all sums which the insured carrier shall become legally obligated to pay as damages for bodily injury to or death of persons, or for loss or damage to property of others (except as exclusion of coverage is permitted by § 298.44) resulting from the insured operator's negligent operation, maintenance or use of aircraft in "air transportation," as that term is defined by the Federal Aviation Act of 1958.

(b) The liability of the insurer shall apply to all operations by the insured operator in "air transportation," as that term is defined by the Federal Aviation Act of 1958. The liability of the insurer shall not be subject to any exclusion by virtue of violations, by the insured operator, of any applicable safety or economic rule, regulation, order, or other legally imposed requirement prescribed thereunder by the Federal Aviation Administration or the Civil Aeronautics Board or any other State or Federal law or regulation. No special waiver or exemption issued by the Federal Aviation Administration or the Civil Aeronautics Board shall affect the insurance afforded by the policy.

(c) The liability of the insurer shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the insured. The limits of the insurer's liability for the amounts prescribed herein shall apply separately to each occurrence. Any payment made under the policy because of any one occurrence shall not reduce the liability of the insurer for payment of other damages resulting from any other occurrence.

(d) Within the limits of liability herein prescribed, the insurer shall not be relieved from liability by any condition, warranty, or exclusion in the policy or any endorsement thereon, or violation thereof by the insured air taxi operator, other than by the exclusions set forth in § 298.44 or such other exclusions as may be individually approved by the Board.

(e) The policy of insurance shall state that, pursuant to any statute of any State, Territory, or District of the United States which makes provision therefor, the insurer designates the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute (or his successor or successors in office) as the insurer's attorney upon whom may be served process in any action arising out of the policy of insurance.

(f) With respect to certificates of insurance which list aircraft by FAA registration number, the policy of insurance shall state that, while an aircraft owned by the named insured and declared in the policy is withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by the policy with respect to such aircraft shall apply also with respect to another aircraft of similar type, horsepower, and seating capacity, whether or not owned by the insured, while temporarily used as the substitute for such aircraft.

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[8] For example: the minimum single limit of liability acceptable for an aircraft in passenger service with 16 passenger seats would be computed on the basis of limits set forth in paragraph (a) as follows: 16×.75 equals 12; 12×$75,000 equals $900,000; $900,000 plus $300,000 (nonpassenger liability per occurrence), plus $100,000 (property damage per occurrence) equals $1,300,000. The latter is the amount in which a single-limit liability policy may be written.

§ 298.44 Authorized exclusions of liability.

Unless other exclusions are individually approved by the Board, no policy or certificate of insurance required by this part shall contain any exclusion other than the following authorized exclusions:

(a) Any loss against which the named insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be in excess of the limits provided by such other valid and collectible insurance up to the limits certified in a certificate of insurance, but in no event exceeding the limits of liability expressed elsewhere in this policy;

(b) Liability assumed by the named insured under any contract or agreement, unless such liability would have attached to the insured even in the absence of such contract or agreement: *Provided, however,* That this exclusion shall not apply to the named insured's waiver of liability limitations under the Warsaw Convention by signing a counterpart to the agreement of carriers (Agreement CAB 18900), as approved by Board Order E-23680, May 13, 1966, agreeing to a minimum liability for injury or death of passengers of $75,000 per passenger, or any amendment or amendments to such agreement which may be approved by the Board and to which the named insured becomes a party;

(c) Bodily injury, sickness, disease, mental anguish, or death of any employee of the named insured while engaged in the duties of his employment, or any obligation for which the named insured or any company as his insurer may be held liable under any workmen's compensation or occupational disease law;

(d) Loss of or damage to property owned, rented, occupied, or used by, or in the care, custody, or control of the named insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

(e) Personal injuries or death, or damage to or destruction of property, caused directly or indirectly by hostile or war-like action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power, *de jure* or *de facto*, or military, naval, or air forces, or by an agent of such government, power, authority, or forces; the discharge, explosion, or use of any weapon of war employing atomic fission or atomic fusion, or radioactive materials; insurrection, rebellion, revolution, civil war, or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority;

(f) Any loss arising from operations within any geographic areas other than the following:

(1) Between any points in the "area of operation" as described in the operations specifications issued by the FAA in conjunction with its issuance of the applicable ATCO certificate to each air taxi operator: *Provided, however,* That if one or more of the 48 contiguous States or the District of Columbia is listed in such area of operation, all 48 contiguous States and the District of Columbia must be included within the coverage of insurance under this subpart; and

(2) Within any other geographic area for which coverage is specified in the policy of insurance;

(3) *Provided, further,* That 'a loss caused by mere misadventure in flying over or landing in any geographic area not specified in paragraph (f) (1) or (2) of this section shall not be excluded.

(g) Any loss arising from operations by the named insured to or from installations of the Distant Early Warning System (DEW line) or the Ballistic Missile Early Warning System (BMEWS);

(h) Any loss arising from operation of an aircraft (1) without a copilot, if one is required under the policy of insurance or (2) by a pilot (or pilot and copilot) not named in or meeting the qualification, experience, and currency requirements provided in the policy of insurance;

(i) Any loss arising from the ownership, maintenance, or use of any aircraft of a type or class not specified for coverage in the policy, or any aircraft not declared to the Insurer in accordance with the terms and conditions of the policy, other than substitute aircraft as provided in § 298.43(f);

(j) Any loss arising from operations other than the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft, in interstate, overseas, or foreign air transportation;

(k) Any loss arising from operations with aircraft for which an airworthiness certificate has not been issued, has been surrendered, or has been suspended or revoked by the Administrator of the Federal Aviation Administration, or has expired by its terms;

(l) Any loss arising from operations with aircraft which, at takeoff, have not had inspections, maintenance, preventive maintenance, and alterations performed when required by the Federal Aviation Regulations, or which have not had such inspections, maintenance, preventive maintenance, and alterations performed by persons authorized by the Federal Aviation Regulations.

§ 298.45 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.

Each policy of insurance shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to exclude any aircraft or reduced the limits of liability or the extent of coverage, by the insurer or the insured, nor expire by its own terms, until 10 days after written notice by the insurer (in the event of replacement, by the retiring insurer), describing the change, to the Board's Bureau of Pricing and Domestic Aviation, Washington, D.C. 20428, (or, in the case of air taxi operators in Alaska, to the CAB Field Office, Anchorage, Alaska 99501) which 10-day notice period shall start to run from the date such notice is actually received by the Board. In the case of expiration by the policy's own terms, to be effective under this section a notice of nonrenewal by the insurer must be received not more than 30 days before the expiration date. For purposes of this subpart, a policy will not be considered to have expired if the same insurer renews its coverage without reduction in the extent of coverage or limits of liability, and without a break in coverage, whether or not a new policy is issued, and notice to the Board is not required in that event.

[ER-1029, 42 FR 60731, Nov. 29, 1977]

Subpart F—Reporting Requirements

§ 298.60 General reporting instructions.

(a) Each commuter air carrier and each small certificated air carrier shall file with the Civil Aeronautics Board the applicable schedules of CAB Form 298-C "Report of Financial and Operating Statistics for Small Aircraft Operators" as required in this section.

(b) A single copy of the CAB Form 298-C report be filed quarterly with the Office of Comptroller for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, and February 10, respectively. Due dates falling on a Saturday, Sunday or national holiday will become effective on the first following working day.

(c) All reports should be addressed as follows: Data Administration Division; DAI-20, Room 4123; Office of Aviation Information Management; Research and Special Programs Administration; Department of Transportation; 400 Seventh Street, SW.; Washington, D.C. 20590.

(d) All information included in CAB Form 298-C schedules shall be typed or neatly printed.

(e) CAB Form 298-C schedules can be obtained from the above address or by telephone (202) 426-8847.

[ER-1399, 50 FR 19, Jan. 2, 1985]

§ 298.61 Reporting of traffic statistics for scheduled passenger operations.

(a) Each commuter air carrier and each small certificated air carrier shall file CAB Form 298-C, Schedule A-1, "Report of Flight and Traffic Statistics in Scheduled Passenger Operations" and Schedule T-1, "Report of Revenue Traffic by On-Line Origin and Destination."

(b) Schedules A-1 and T-1 shall be filed quarterly as set forth in § 298.60.

(c) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(d) The information included in this report shall pertain only to flights performed in scheduled passenger service during the quarter for which the report is filed.

(e) Schedule A-1 shall be used to report the total flight and traffic statistics in scheduled passenger operations by commuter air carriers and small certificated air carriers. These statistics should cover only scheduled passenger services and should be compiled in accordance with the instructions below. All statistics shall be reported in whole numbers; do not use decimals.

(f) Schedule T-1 shall show the total on-line origin and destination traffic in scheduled passenger services for the period as follows:

(1) Each pair of origin and destination airports shall appear only once, *i.e.*, no entry shall have the same origin and destination airports as another entry. For example, DAL-HOU and HOU-DAL would each appear once, but either DAL or HOU could reappear with any other point.

(2) The origin and destination data shall be for the on-line movement of traffic rather than for flight stages or flight origin and destination. For example, if a flight operates from A to B to C with 5 passengers enplaning at A, 1 deplaning and 2 enplaning at B, and 6 deplaning at C, the applicable passenger data would be reported as follows:

Origin airport	Destination airport	Number of passengers
A	B	1
A	C	4
B	C	2

(3) Only the ultimate origins and destinations of the traffic moving on the reporting carrier's system shall be reported. Using the example given above, the traffic report would remain the same, even if the carrier operated one flight from A to B and a different flight from B to C, as long as the passengers' on-line origins and destinations remained the same.

(4) Only one grand total shall be shown in the space provided after the final traffic entry. Do not use subtotals.

(5) Columns (1) and (2) shall show the airport codes for the movement of traffic from the point of origin to the point of destination. Carriers shall use the airport codes in the *Official Airline Guide* (OAG). If an airport cannot be found in the OAG, the carrier shall, until otherwise instructed by the Board, insert its own code for the airport in column (1) or (2) followed by an asterisk, and shall identify the airport and its location in the space provided.

(6) Column (3) shall show the total number of revenue passengers transported from the point of on-line origin to the point of on-line destination.

(7) Columns (4) and (5) shall be completed only by intra-Alaskan carriers, and shall reflect the total pounds of cargo and pounds of mail, respectively, transported from the point of on-line origin to the point of on-line destination.

(g) The information requested in CAB Form 298-C may be submitted on any comparable form prepared on automatic data processing equipment if the substitute form has been approved by the Comptroller, Civil Aeronautics Board, Washington, D.C. 20428. Data in any approved format shall contain the same column headings arranged in the same sequence as in CAB Form 298-C.

(h) Commuter air carriers serving or proposing to serve an eligible point shall comply with the applicable requirements in Part 204 of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0009)

[ER-1148, 44 FR 51799, Sept. 5, 1979, as amended by ER-1208, 46 FR 8444, Jan. 17, 1981; ER-1289, 47 FR 12949, Mar. 26, 1982; 49 FR 28240, July 11, 1984; ER-1399, 50 FR 19, Jan. 2, 1985]

§ 298.62 Reporting of financial data.

(a) Each small certificated air carrier shall file CAB Form 298-C, Schedule F-1 "Report of Financial Data." This report shall be filed quarterly as set forth in § 298.60.

(b) Each carrier shall indicate the space provided, its full corporate name and the quarter for which the report is filed.

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 "Total Operating Revenues" shall include gross revenues accuring from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under section 419 of the Federal Aviation Act and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 "Total Operating Expenses" shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation services. This category shall include expenses incurred: directly in the inflight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to air transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidential services shall *not* be included in this category.

(3) Line 3 "Net Income or (Loss)" shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(4) Line 4 "Passenger Revenues-Scheduled Service" shall include revenue generated from the transportation of passengers between pairs of points which are served on a regularly scheduled basis.

(d) Data reported on this form shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates. Individual carrier financial data withheld from public disclosure may be disclosed by the Board to:

(1) Parties to any proceeding before the Board to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board;

(2) Such persons and in such circumstances as the Board determines to be in the public interest or consistent with its regulatory functions and responsibilities; and

(3) Agencies and other components of the Federal Government for their internal use only. Aggregate data that does not identify individual carriers may be released prior to the aforementioned time.

[ER-1399, 50 FR 20, Jan. 2, 1985]

§ 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.

(a) Each small certificated air carrier shall file CAB Form 298-C, Schedule F-2 "Report of Aircraft Operating Expenses and Related Statistics." This schedule shall be filed quarterly as prescribed in § 298.60. Data reported on this report shall be for the overall or system operations of the air carrier.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided for "Aircraft Type." "Aircraft Type" refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the three digit code prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. (NOTE: Aircraft of the same type but different cabin configuration may be grouped into a single classification; therefore, carriers are not required to report the fourth digit of an aircraft code indicating cabin configuration.)

(d) Line 1 Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 "Flying Operations (Less Rental)" shall be subdivided as follows:

(i) Line 3 "Pilot and Copilot" expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 "Other" expenses shall include general (hull) insurance, and all other expenses incurred in the inflight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status, which are not provided for otherwise on this schedule.

(2) Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

(3) Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

(5) Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

(e) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 "Flight Attendant Expense" shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 "Traffic Related Expense" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 "Departure Related (Station) Expense" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectible accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other spe-

cifically identified indirect cost category.

(f) Line 15 "Total Indirect Expense" shall equal the sum of lines 11, 12, 13 and 14.

(g) Line 16 "Total Operating Expense" shall equal the sum of lines 9 and 15.

(h) Line 17 "Total Block Hours (Revenue Service)" shall be computed from the time an aircraft first moves under its own power for the purposes of flight in revenue service until it comes to rest at the next point of landing. Data shall be reported by individual aircraft type and total.

(i) Line 18 "Total Departures (Revenue Service)" shall include total takeoffs in revenue service by individual aircraft type and total.

(j) Line 19 "Total Gallons of Fuel Issued" shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

[ER-1399, 50 FR 20, Jan. 2, 1985]

§ 298.64 Reporting of nonscheduled passenger enplanements by small certificated air carriers.

(a) Each small certificated air carrier shall file CAB Form 298-C, Schedule E-1 "Report of Nonscheduled Passenger Enplanements by Small Certificated Air Carriers." This schedule shall be filed quarterly as prescribed in § 298.60.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) Enplaned passenger data shall be provided for each airport served in nonscheduled service. Nonscheduled service includes charter flights and other transportation services not constituting an integral part of services performed pursuant to published flight schedules, but does not include flights performed as extra sections to published flight schedules.

(d) In column 1, carriers shall report the full name of each airport served in nonscheduled service.

(e) In column 2, carriers shall report the three-letter airport code found in the "Official Airline Guide" (OAG). If the OAG contains no three-letter code for a point served by the carrier, a three-letter code will be provided by the Civil Aeronautics Board's Information Management Division upon request.

(f) In column 3, carriers shall report the total nonscheduled passengers enplaned at each airport reported in column 1. This column shall be totaled.

[ER-1399, 50 FR 21, Jan. 2, 1985]

§ 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.

(a) If circumstances prevent the filing of CAB Form 298-C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the Board's Office of Comptroller in writing at least three days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Office of Comptroller may waive any reporting requirements contained in § 298.61, § 298.62, § 298.63 and § 298.64 of this part, upon its own initiative or upon written request from any air carrier if the waiver is in the public interest and the request demonstrates that (1) unusual circumstances warrant such a departure, (2) a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal, and (3) the application of the alternative procedure will maintain or improve uniformity in reporting between air carriers.

[ER-1399, 50 FR 21, Jan. 2, 1985]

§ 298.66 Reporting exemption for State collection of data.

(a) The Office of Comptroller may exempt a commuter air carrier from the reporting requirements of § 298.61 of this part if a State government collects the information specified in that section and provides it to the Board by the dates specified. The data provided to the Board in this manner must be at least as reliable as if they were collected by the Board directly.

(b) The Office of Comptroller will provide assistance to any State agency interested in participating in this exemption program.

[ER-1399, 50 FR 21, Jan. 2, 1985]

Subpart G—[Reserved]

Subpart H—Violations

§ 298.80 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 901(a) of the Act; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions including revocation of operating authority.

Subpart I—Air Taxi Operations by Certificated Carriers

Source: ER-1251, 46 FR 51374, Oct. 20, 1981, unless otherwise noted.

§ 298.90 Exemption for certificated carriers.

(a) Each certificated carrier is exempted from the Act in the manner set forth in Subpart B, subject to the terms of this subpart and Subparts C through H, as if it were an air taxi operator, for operations that are performed with small aircraft. However, a certificated carrier need not comply with the registration provisions of Subpart C (§§ 298.21 through 298.24) unless its only section 401 certificate authority was obtained:

(1) After January 1, 1981, and

(2) Under section 401(d)(5) of the Act (unused authority).

(b) All of a certificated carrier's operations with small aircraft shall be considered as operations "under this part" and not under its section 401 certificate. However, for the purposes of section 105(a)(2) of the Act (limiting Federal preemption of State regulation for certain intra-Alaska service), a certificated carrier's operations under this part shall be considered as "provided pursuant to" its certificate.

(c) Notwithstanding § 298.11 (b), (c) or (d), certificated carriers operating under this part are not exempted from section 403 or 404 of the Act with respect to air transportation conducted wholly within the State of Alaska.

[ER-1278, 47 FR 608, Jan. 6, 1982]

§ 298.91 No exemption from section 407.

Notwithstanding § 298.11(f), certificated carriers operating under this part are not exempted from section 407 of the Act.

[ER-1278, 47 FR 608, Jan. 6, 1982]

§ 298.93 Through service options.

(a) *Interstate and overseas air transportation.* If a certificated carrier provides interstate or overseas air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing or not filing a tariff. If the carrier files a tariff for through service, it is not exempt from section 403 or section 404(b) of the Act for that air transportation, except to the extent set forth in § 221.3(e) of this chapter (domestic tariff flexibility).

(b) *Foreign air transportation.* If a certificated carrier provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from section 403 or section 404(b) of the Act for that air transportation.

[ER-1278, 47 FR 608, Jan. 6, 1982]

§ 298.94 Joint fares and 90-day notice of service modifications, suspensions or terminations.

The 90-day notice requirement in section 37(c) of the Airline Deregulation Act of 1978, 49 U.S.C. 1482a, does not apply to a certificated carrier's operations under this part.

[ER-1278, 47 FR 608, Jan. 6, 1982]

§ 298.95 Baggage liability.

The rules for baggage liability are set forth in Part 254 of this chapter. Certificated air carriers that operate under this part shall provide the notices set forth in §§ 298.30 and 254.5 of this chapter.

[ER-1378, 49 FR 14087, Apr. 10, 1984]

§ 298.96 [Reserved]

§ 298.97 Carriage of mail.

The limitations on the carriage of mail set out in § 298.35 apply to the carriage of mail by a certificated carrier only for its operations under this part.

§ 298.98 Use of name.

Names of certificated carriers that engage in operations under this part are governed by Part 215 of this chapter and not by § 298.36.

§ 298.99 [Reserved]

§ 298.100 Liability insurance.

Until the effective date of Part 205 of this chapter, the liability insurance requirements of Subpart E apply to a certificated carrier's aircraft that are used in operations under this part, regardless of whether the aircraft are also used in other operations. On and after that date certificated carriers are subject to the liability insurance requirements set out in Part 205 of this chapter.

SUBCHAPTER B—PROCEDURAL REGULATIONS

PART 300—RULES OF CONDUCT IN DOT PROCEEDINGS UNDER THIS CHAPTER

Sec.

300.0 Applicability.
300.0a Applicability of 49 CFR Part 99.
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300.10a Permanent and temporary disqualification of DOT employees.
300.11 Disqualification of Government officers and employees.
300.12 Practice of special Government employees permitted.
300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.
300.14 Temporary disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters formerly under their official responsibility.
300.15 Opinions or rulings by the General Counsel.
300.16 Waivers.
300.17 Disqualification of partners of DOT employees.
300.18 [Reserved]
300.19 Use of confidential information.
300.20 Violations.

AUTHORITY: Secs. 204, 401-419, 901, 903, 1001, 1002, and 1007, Pub. L. 85-726, as amended; 72 Stat. 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 783, 786, 788, 796; 76 Stat. 145; 91 Stat. 1284; 92 Stat. 1732; (49 U.S.C. 1324, 1371-1389, 1471, 1473, 1481, 1482, and 1487), (18 U.S.C. 20(b)(c); 49 U.S.C. Subtitle I.

SOURCE: Doc. No. 82, 50 FR 2380, Jan. 16, 1985, unless otherwise noted.

§ 300.0 Applicability.

The rules of conduct set forth in this part except as otherwise provided in this or any other DOT regulation shall govern the conduct of the parties and their representatives, and the relationships between the Office of the Secretary of Transportation, the Office of the Assistant Secretary for Policy and International Affairs, and the Office of the General Counsel, including regular personnel, and officials, special Government employees, consultants, or experts under contract to the Department of Transportation (DOT) and administrative law judges (hereinafter referred to as "DOT employee(s)") and all other persons in all DOT matters resulting from the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended by the Civil Aeronautics Board Sunset Act of 1984.

§ 300.0a Applicability of 49 CFR Part 99.

(a) Except as provided in paragraph (b) of this section, each DOT employee involved in matters covered by this chapter shall comply with the rules on "Employee Responsibilities and Conduct" in 49 CFR Part 99.

(b) The rules in this Part shall be construed as being consistent with those in 49 CFR Part 99. If a rule in this part is more restrictive than a rule in 49 CFR Part 99, the more restrictive rule shall apply.

§ 300.1 Judicial standards of practice.

Under the transfer of authority under section 1601(b)(1) of the Federal Aviation Act of 1958, certain of DOT's functions are similar to those of a court, and parties to cases before DOT and those who represent such parties are expected—in fact and in appearance—to conduct themselves with honor and dignity as they would before a court. By the same token, any DOT employee or administrative law judge carrying out DOT's quasi-judicial functions and any DOT employee making recommendations or advising them are expected to conduct themselves with the same fidelity to appropriate standards of propriety that characterize a court and its staff. The standing and effectiveness of DOT in carrying out its quasi-judicial functions are in direct relation to the observance by DOT, DOT employees, and the parties and attorneys appearing before DOT of the highest standards of judicial and professional ethics. The rules of conduct set forth in this part are to be interpreted in light of those standards.

§ 300.2 Prohibited communications.

(a) *Basic requirement.* Except as provided in paragraphs (c), (d) and (e) there shall be no substantive communication in either direction between any concerned DOT employee and any interested person outside DOT, concerning a public proceeding, until after final disposition of the proceeding, other than as provided by Federal statute or published DOT rule or order.

(b) *Definitions.* For purposes of this part:

(1) A "substantive communication" is any written or oral communication relevant to the merits of the proceeding.

(2) The "DOT decisionmaker" is defined in 14 CFR 302.22a.

(3) A "concerned DOT employee" is a DOT employee who is or may reasonably be expected to be directly involved in a decision which is subject to a public proceeding.

(4) A "public proceeding" is one of the following:

(i) A hearing proceeding (i.e., proceeding conducted on-the record after notice and opportunity for an oral evidentiary hearing as provided in § 302.24)

(ii) A rulemaking proceeding involving a hearing as described in paragraph (b)(4)(i) of this section or an exemption proceeding covered by this chapter. (Other rulemaking proceedings are covered by the ex parte communication policies of DOT Order 2100.2.)

(iii) A tariff filing after DOT has ordered an investigation or a complaint has been filed or docketed.

(iv) A proceeding initiated by DOT show-cause order, after the filing in the docket of an identifiable written opposition to the order's tentative findings.

(v) Any other proceeding initiated by a docket filing, other than a petition for generally applicable rulemaking, after the filing in the docket of an identifiable written opposition to the initiating document.

(c) *General exceptions.* Paragraph (a) of this section shall not apply to the following:

(1) Informal communications between legal counsel, including discussions about stipulations and other communications considered proper in Federal court proceedings.

(2) Information given to a DOT employee who is participating in a hearing case on behalf of an office that is a party, to another DOT employee who is reviewing that work, or to his or her supervisors within that office.

(3) Communications made in the course of an investigation to determine whether formal enforcement action should be begun.

(4) Settlement discussions and mediation efforts.

(5) Information given at the request of a DOT employee acting upon a specific direction of DOT, in a case other than a hearing proceeding as described in paragraphs (b)(4) (i) and (ii) (a"nonhearing case"), where DOT has decided that emergency conditions exist and this rule would otherwise prevent the obtaining of needed information in a timely manner.

(6) Information given at the request of a DOT employee in a tariff matter after a complaint is filed but before an investigation is ordered.

(7) Nonhearing cases that are to be decided within 30 days after the filing of the initiating document.

(8) Nonhearing cases arising under section 419 of the Federal Aviation Act, 49 U.S.C. 1389.

(9) In nonhearing cases, communications with other Federal agencies not exempted by paragraph (e) of this section, provided the agencies have not participated as parties in the proceeding by making filings on-the-record.

(d) *Status and expedition requests.* Paragraph (a) of this section shall not apply to oral or written communications asking about the status, or requesting expeditious treatment, of a public proceeding. However, any request for expeditious treatment should be made in accordance with the Rules of Practice, particularly Rules 14 and 18, §§ 302.14 and 302.18 of this chapter.

(e) *National defense and foreign policy.* In nonhearing cases, paragraph (a) of this section shall not apply to communications concerning national defense or foreign policy matters, including international aviation matters. In hearing cases, any communications on those subjects to or from DOT employees involved in intergovernmental negotiations that would be barred by paragraph (a) are permitted if the communicator's position with respect to those negotiations cannot otherwise be fairly presented, but those communications shall not be considered as part of the record on which decisions must be made.

(f) *Communications not considered.* A communication in violation of this section shall not be considered part of a record, or included as available material, for decision in any proceeding.

§ 300.3 Reporting of communications.

(a) *General.* The following types of substantive communication shall be reported as specified in paragraph (b) of this section:

(1) Any communication in violation of § 300.2(a) of this chapter.

(2) Information given upon determination of an emergency under § 300.2(c)(5) of this chapter.

(3) Information given at the request of a DOT employee in a tariff matter under § 300.2(c)(6) of this chapter.

(4) Communications in nonhearing cases to be decided within 30 days under § 300.2(c)(7) of this chapter.

(5) Communications in nonhearing cases arising under section 419 of the Federal Aviation Act, 49 U.S.C. 1389, made under § 300.2(c)(8).

(b) *Public filing.* (1) A written communication shall be put into the correspondence or other appropriate file of the proceeding, which shall be available for inspection and copying during business hours in the Documentary Services Division.

(2) An oral communication shall be summarized by the DOT employee receiving it. One copy shall be put into a public file as described in paragraph (b) (1) of this section, and another copy shall be mailed to the communicator.

(3) In addition, copies of written communications and oral summaries shall be filed in chronological order in a "Part 300" file maintained in the Documentary Services Division.

(4) Copies of all filings under this part dealing with discontinuances or reductions of air transportation shall be mailed to the directly affected local communities, State agencies, and airport managers.

(c) *Status and expedition requests.* A DOT decisionmaker who receives a communication asking about the status or requesting expeditious treatment of a public proceeding, other than a communication concerning national defense or foreign policy (including international aviation), shall either:

(1) Refer the communicator to the Documentary Services Division.

(2) If the DOT decisionmaker responds by advising on the status, put a memorandum describing the exchange in the public file as described in paragraph (b)(1) of this section.

§ 300.4 Separation of functions in hearing cases.

(a) This section applies after the initiation of a hearing or enforcement case by the Department

(b) A DOT employee who is participating in a hearing case on behalf of an office that is a party, another DOT employee who is in fact reviewing the position taken, or who has participated in developing the position taken in that case, or, in cases involving accusatory or disciplinary issues (including all enforcement cases) such employees' supervisors within that office, shall have no substantive communication with any DOT decisionmaker, administrative law judge in the case, or other DOT employee advising them, with respect to that or any factually related hearing case, except in accordance with a published DOT rule or order. In addition, each bureau or office supervisor of a DOT employee who is participating in a hearing case on behalf of that office when it is a party shall have no substantive communication with any administrative law judge in the case, or DOT employee advising the judge, in that or any factually related hearing case, except in accordance with a published DOT rule or order. For each hearing case, bureau or office heads shall maintain a publicly available record of those employees who are participating or are in fact reviewing the position taken, or who have participated in developing the position taken in that case.

(c) In hearing cases involving fares or rates, or applications for a certificate or permit under sections 401 or 402 of the Act, or applications by a holder for a change in a certificate or permit, a supervisor who would not be permitted to advise the DOT decisionmaker under paragraph (a) may advise the DOT decisionmaker in the following manner: The supervisor's advice must either be made orally in an open DOT meeting or by a memorandum placed in the docket or other public file of such matter. Oral advice must be summarized in writing by the supervisor and placed in the docket or file of the matter. A copy of such written memorandum or summary of oral advice must be served on each party to the proceeding within 3 business days after such advice is given to the concerned DOT decisionmaker. Each of the parties may comment in writing on such advice within 5 business days after service or the summary. In no event, however, may a supervisor advise the DOT decisionmaker if he or she acted as the office's counsel or witness in the matter.

(d) In enforcement cases, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, under the supervision of the Deputy General Counsel, will conduct all enforcement proceedings and related investigative functions, while the General Counsel will advise the DOT decisionmaker in the course of the decisional process. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report to the Deputy General Counsel. To ensure the independence of these functions, this Office and the Deputy General Counsel, for the purpose of this section, shall be considered an "office" as that term is used in paragraph (a), separate from the General Counsel and the rest of the Office of the General Counsel.

§ 300.5 Prohibited conduct.

No person shall: (a) Attempt to influence the judgment of a concerned DOT employee by any unlawful means such as deception or the payment of money or other consideration; or

(b) Disrupt or interfere with the fair and orderly disposition of a DOT proceeding.

§ 300.6 Practitioners' standards of conduct.

Every person representing a client in matters before DOT in all contacts with DOT employees, should:

(a) Strictly observe the standards of professional conduct;

(b) Refrain from statements or other actions designed to mislead DOT or to cause unwarranted delay;

(c) Avoid offensive or intemperate behavior;

(d) Advise all clients to avoid improprieties and to obey the law as the attorney believes it to be; and

(e) Terminate the professional relationship with any client who persists in improprieties in proceedings before DOT.

§ 300.7 Conciseness.

Every oral or written statement made in a DOT proceding shall be as concise as possible. Verbose or redundant presentations may be rejected.

§ 300.8 Gifts and hospitality and other conduct affecting DOT employees.

(a) No person, otherwise than as provided by law for the proper discharge of official duty, shall directly or indirectly give, offer, or promise anything of value to any DOT employee for or because of any official act performed or to be performed by such DOT employee (18 U.S.C. 201).

(b) Subject to 49 CFR Part 99, it is improper for persons interested in the business of DOT to provide hospitality, gifts, entertainment, or favors to any DOT employee.

(c) Persons interested in the business of DOT should familiarize themselves with (49 CFR Part 99), in order that they shall not encourage or cause any violation of the provisions of that part by any DOT employee.

§ 300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall permanently disqualify himself or herself from participation in every matter before the Department in which he or she previously personally and substantially participated for an interested person or entity, including other agencies of the United States Government, before joining the DOT or the Civil Aeronautics Board. Such disqualification shall be applicable also if a person is closely related to is a DOT employee as partner, associate, employer, or the like, personally and substantially participated in a matter before DOT prior to the employee's employment by the Department or the Civil Aeronautics Board and the circumstances were such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee, including any member of a DOT employee's personal staff or a special Government employee, whose prior personal and substantial participation in a DOT or Civil Aeronautics Board proceeding or whose relationship to one who so participated occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding unless participation could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship.

§ 300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall temporarily disqualify himself or herself from participation in any matter before DOT if he or she represented, was associated with or was employed by an interested person or entity including other agencies of the United States Government before joining DOT or the Civil Aeronautics Board, and, although he or she did not personally and substantially participate in the matter, the matter was within his or her "official responsibility," as that term is defined in § 300.14 of this chapter except that the action referred to therein shall be private action as well as "Government" action. Such disqualification shall be applicable also if a person closely related to the DOT employee as partner, associate, employer, or the like, who, while not personally and substantially participating in the matter, had it within his or her "official responsibility" as that term is defined in § 300.14 of this chapter, and modified above, and the circumstances are such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee whose prior "official responsibility" or relationship to one with such responsibility occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding. The temporary disqualification shall run for a period of one year from the date of the termination of the representation, association, or employment with the interested person or entity.

§ 300.10a Permanent and temporary disqualification of DOT employees.

Due to the transfer of authority under 1601(b)(1) of the Federal Aviation Act of 1958, the terms of §§ 300.9

and 300.10 shall not be construed to apply to DOT employees who previously personally and substantially participated in matters before the Board, which have become the subject of DOT proceedings.

§ 300.11 Disqualification of Government officers and employees.

No officer or employee of the Federal Government, other than a "special government employee" as defined in 18 U.S.C. 202, shall represent anyone, otherwise than in the proper discharge of his or her official duties, in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest.

(18 U.S.C. 205)

§ 300.12 Practice of special Government employees permitted.

A special Government employee, who qualifies as such under the provisions of 18 U.S.C. 202(a), may participate in DOT proceedings only to the extent and in the manner specified in 18 U.S.C. 205.

§ 300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.

No former Board member or employee or DOT employee shall act as agent or attorney before DOT for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter, involving a specific party or parties, in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Board member or employee or DOT employee.

(18 U.S.C. 207(a))

§ 300.14 Temporary disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters formerly under their official responsibility.

Within one year after termination of employment with the Board or DOT, no former Board member or Board employee or DOT employee shall appear personally before DOT on behalf of any person other than the United States in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his or her official responsibility at any time within one year preceding termination of such responsibility. The term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(18 U.S.C. 202(b), 207(b))

§ 300.15 Opinions or rulings by the General Counsel.

(a) The General Counsel is authorized to render opinions or rulings to the public on the application of the provisions of this part. When written request is made for such opinions and rulings, they shall be transmitted to DOT and shall be available to the public in the Documentary Services Division after any appeal to or review by the Secretary has been completed or after the time for review has expired. Identifying details shall normally be stricken from copies available to the public unless the public interest requires disclosure of such details.

(b) If any person is disqualified from a particular proceeding under the provisions of §§ 300.9, 300.10, 300.13, 300.14, and 300.17 of this chapter by a ruling of the General Counsel, or by such person's own action, such disqualification shall be memorialized in a writing filed in the appropriate file of the matter by the General Counsel or such person.

§ 300.16 Waivers.

(a) A former Board member, Board employee or DOT employee with outstanding scientific or technological qualifications who is disqualified from acting in a representative capacity under the provisions of § 300.13 or § 300.14 of this chapter may nevertheless participate in a proceeding in a scientific or technological field pursuant to the terms of a certificate issued in compliance with the proviso following 18 U.S.C. 207 (a) and (b).

(b) An employee who believes his or her prior employment relationships will not affect the integrity of his or her services may request that the prohibition of § 300.9 or § 300.10 of this chapter be waived by the appropriate Ethics Counselor under 49 CFR 99.735-71.

§ 300.17 Disqualification of partners of DOT employees.

No partner of a DOT employee shall act as agent or attorney for anyone other than the United States in any DOT proceeding or matter in which such employee participates or has participated personally and substantially through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise, or which is the subject of his or her official responsibility.

§ 300.18 [Reserved]

§ 300.19 Use of confidential information.

No former CAB member or employee or DOT employee, or any person associated with him or her, shall ever use or undertake to use in any DOT proceeding or matter any confidential facts or information which came into the possession of such Member or employee or to his or her attention by reason of his or her employment with the CAB or DOT without first applying for and obtaining the consent of the appropriate ethics counselor for the use of such facts or information.

§ 300.20 Violations.

(a) DOT may disqualify, and deny temporarily or permanently the privilege of appearing or practicing before it in any way to, any person who is found by DOT after written notice of charges and hearing to have engaged in unethical or improper professional conduct. Any violation of this part shall be deemed to be such conduct.

(b) When appropriate in the public interest, DOT may deny any application or other request of a party in a proceeding subject to this part where DOT finds after hearing that such party has, in connection with any DOT proceeding, violated any of the provisions of this part or any of the provisions of Chapter 11 of Title 18 of the United States Code. DOT may also condition its further consideration of such party's application or other request or the effectiveness of any order granting such application or other request upon such party's first taking such action as DOT may deem necessary or appropriate to remedy the violation of this part or Chapter 11 of Title 18 of the United States Code to prevent or deter any repetition of such violation. DOT may in addition issue a cease and desist order against any repetition of such or similar misconduct.

(c) The actions authorized by this section may take place within the framework of the matter during or concerning which the violations occur or in a separate matter, as the DOT decisionmaker or the presiding administrative law judge may direct. A complaint alleging that a violation has occurred in the course of a matter shall be filed in the docket or appropriate public file of such matter unless such complaint is made after DOT's decision of the matter has become final, in which event such complaint may be filed pursuant to Part 302, Subpart B of the rules of practice. A violation in the course of a matter which may be attributable to or affect the fitness of a party will ordinarily either be disposed of within the framework of such matter or be considered within the context of any subsequent matter involving the interests of such party. Other violations will ordinarily be disposed of in a separate proceeding.

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of section 901 of the Act. The violator may also be subject to a proceeding brought under section 1002 before the Department and under sections 903 and 1007 of the Act before a U.S. district court to compel compliance with civil penalties which have been imposed.

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APPENDIX A—INDEX TO RULES OF PRACTICE

AUTHORITY: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 901, 1001, 1002, 1005, Pub. L. 85-726, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 763, 770, 783, 788, 794; 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91-90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted; 49 U.S.C. Subtitle I; Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

SOURCE: Doc. No. 82, 50 FR 2384, Jan. 16, 1985, unless otherwise noted.

§ 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all economic proceedings before DOT whether instituted by order of DOT or by the filing with DOT of an application, complaint, petition, or a section 412 contract or agreement. This part also contains delegations to administrative law judges and to the DOT decisionmaker of DOT's function to render the agency decision in certain cases. The decision of administrative law judges is subject to review by the DOT decisionmaker, pursuant to authority delegated by the Secretary. Decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Policy and International Affairs. In appropriate cases, the Secretary may exercise the discretionary review authority. The provisions of Part 263 of this chapter of the Economic Regulations are applicable to participation of air carrier associations in proceedings under this part. Proceedings involving "Alaskan air carriers" are governed by the rules in this part, except as modified by Part 292 of this chapter.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to Subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT relating to the proceeding.[1] Wherever there is any conflict between one of the general rules in Subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

§ 302.2 Reference to part and method of citing rules.

This part shall be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "302.8 *Service of documents*", shall be referred to as "Rule 8". Paragraph (a)(2) of that rule, relating to service documents by the parties, shall be referred to as "Rule 8 (a)(2)".

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[1] The Federal Aviation Act of 1958 may be found at 72 Stat. 731, and at 49 U.S.C. 1301 *et seq.* The Department's substantive rules may be found in its Economic Regulations and Special Regulations (Subchapters A and D of this chapter, respectively).

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of Transportation, Washington, D.C. 20590. Such documents shall be deemed to be filed on the date on which they are actually received by DOT. The hours of DOT for the receipt of filings are from 9:00 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

(b) *Formal specifications of documents*—(1) *Typewritten documents.* All typewritten documents, except briefs before DOT, filed under this part shall be on strong, durable paper not larger than 8½ by 14 inches, except that tables, charts and other documents may be larger if folded to the size of the document to which they are physically attached. Typewritten briefs before DOT shall be on paper not larger than 8½ by 11 inches except that tables, charts, and maps physically attached to the brief may be on paper not larger than 8½ by 14 inches and folded to the size of the brief. Requirements as to contents and style of briefs are contained in § 302.31. Text shall be double-spaced except for footnotes and long quotations which may be single-spaced. Type not smaller than elite shall be used. The left margin shall be at least 1½ inches; all other margins shall be at least 1 inch. If the document is bound, it shall be bound on the left side.

(2) *Printed documents.* Printed (typeset) documents that are limited as to number of pages under these rules shall be on paper not larger than 6⅛ inches by 9¼ inches, with all margins of at least 1 inch. The text, footnotes, and all physical attachments to any printed document shall be printed in clear and readable type, not smaller than 11 point, adequately leaded.

(3) *Reproduction of documents.* Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original and twelve (12) true copies of each document required or permitted to be filed under these rules shall be filed with the Documentary Services Division, except that an original and five (5) copies of third party complaints, answers, documents dealing with discovery, and motions addressed to an administrative law judge may be filed in proceedings under Subpart B—Rules Applicable to Enforcement Proceedings. In any route proceeding that affects a point in Alaska, the person filing shall send an additional copy to: Department of Transportation, 701 C Street, Box 27, Anchorage, Alaska 99513. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he or she represents, shall also be typed or printed on all copies below the space provided for signature.

(d) *Table of contents.* All documents filed under this part consisting of twenty or more pages must contain a subject-index of the matter in such document, with page references.

§ 302.4 General requirements as to documents.

(a) *Contents.* In case there is no rule, regulation, or order of DOT which prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required by § 312.12 or § 312.14 of this subchapter, such document shall, at the appropriate time, be accompanied by an Environmental Evaluation, a representation and explanation with respect to § 312.9(a)(2) of this chapter, or an Environmental assessment, in conformity with those sections or orders issued thereunder.

(b) *Subscription.* Every application, petition, complaint, motion or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person; *Provided,* That, if signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person signing the document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) *Designation of person to receive service.* The initial document filed by a person shall state on its first page the name and post office address of the person or persons who may be served with any documents filed in the proceeding. It is requested, but not required, that the telephone number of that person also be included.

(d) *Prohibition of certain documents.* No document which is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters shall be filed with DOT unless:

(1) Such document and its filing by the person submitting it has been expressly authorized or required in the Federal Aviation Act of 1958, any other law, this part, other Department regulations, or any order or other document issued by the DOT decisionmaker, the chief administrative law judge or an administrative law judge assigned to the proceeding, and

(2) Such document complies with each of the requirements of §§ 302.3 and 302.8, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication: *Provided, however,* That for good cause shown, pleadings of any public body or civic organization may be submitted in the form of a letter: *Provided further,* That comments concerning tariff agreements, which have not been docketed, may be submitted in the form of a letter.[3]

(e) *Documents improperly filed.* A document which is filed in violation of the prohibition imposed by paragraph (d) of this section, or in violation of a requirement imposed by any other provision of this part, will not be accepted for filing by DOT and will not be physically incorporated in the docket of the proceeding. The sender of such document and all persons who have been served therewith will be notified informally of DOT's action thereon.

(f) *Motions for leave to file otherwise unauthorized documents.* (1) DOT will accept otherwise unauthorized documents for filing only if leave has previously been obtained, from the administrative law judge or the DOT decisionmaker, on written motion and for good cause shown. The written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(2) After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, these motions shall be addressed to the administrative law judge. At all other times, such motions shall be addressed to the DOT decisionmaker. The administrative law judge or DOT decisionmaker will promptly pass upon such motions.

(3) Such motions shall be filed within seven days after service of any document or order or ruling to which the proposed filing is responsive, and shall be served on all parties to the proceeding. Answers thereto may not be filed.

(4) Such motions shall contain a concise statement of the matters relied upon as good cause and there shall be

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[3] See Subpart L, § 302.1206 providing for the filing of comments with respect to undocketed agreements.

attached thereto the pleading or other document for which leave to file is sought.

§ 302.5 Amendment of documents and dismissal.

If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of DOT as to the contents thereof, or is otherwise insufficient but not subject to rejection under § 302.4(e), DOT, on its own initiative, or on motion of any party, may strike or dismiss such document, or require its amendment. An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to its designation for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.18. If properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required. Protests or memoranda of opposition or support, permitted by statute, shall be filed in lieu of answers or shall be combined with answers.

NOTE: DOT does not grant formal intervention in nonhearing matters, such as applications for exemption under section 416(b) of the Act, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Further responsive documents: Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any further responsive document is not fileable, all new matter contained in such answer shall be deemed controverted. A party to a proceeding whose application has been the subject of a protest or memorandum of opposition or support, permitted by statute, may respond thereto before the close of the hearing in the case to which such documents relate, orally, in writing, or by introducing evidence, subject to appropriate rulings by the administrative law judge. Once such response has been made, such party may also discuss the protest or memorandum in his brief to the administrative law judge or the DOT decisionmaker or in his or her oral argument.

(c) *Time for filing.* Except as otherwise provided, an answer or any further responsive document shall be filed within seven days after service of the document to which such responsive filing is directed. Protests or memoranda of opposition or support, permitted by statute, shall be filed before the close of the hearing in the case to which they relate.

§ 302.7 Retention of documents by DOT.

All documents filed with or presented to DOT may be retained in the files of the Documentary Services Division. However, DOT may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace such documents.

§ 302.8 Service of documents.

(a) *Who makes service*—(1) *DOT.* Formal complaints, notices, orders to show cause, other orders, and similar documents issued by DOT will be served by DOT upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with DOT shall be served by such party or other person upon all parties to the proceeding in which it is filed: *Provided,* That motions to expedite filed in any proceeding conducted pursuant to sections 401 and 402 of the Act, shall, in addition, be served on all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all docu-

ments when they are tendered for filing.

(b) *How service may be made.* Service may be made by express mail, first class mail or priority mail, or by personal delivery. The means of service selected must be such as to permit compliance with section 1005(c) of the Act, which provides for service of notices, processes, orders, rules, and regulations by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership, or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier under section 1005(b) of the Act, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4(c) once a proceeding has been commenced.

(d) *Where service may be made.* Personal service may be made on any of the persons described in paragraph (c) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005(b) of the Act may be served only at his or her office or usual place of residence. Service by regular or registered or certified mail shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by air carrier under section 1005(b) of the Act, or at the post office address stated for a person designated to receive service pursuant to § 302.4(c).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) *Date of service.* Whenever proof of service by mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery is made, the date of such delivery shall be the date of service.

§ 302.9 Parties.

The term "party" wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings.

§ 302.10 Substitution of parties.

Upon motion and for good cause shown, DOT may order a substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion.

§ 302.11 Appearances; rights of witnesses.

(a) Any party to a proceeding may appear and be heard in person or by attorney. No register of persons who may practice before DOT is maintained and no application for admission to practice is required. Any person practicing or desiring to practice before DOT may, upon hearing and good cause shown, be suspended or barred from practicing.

(b) Any person appearing in person in any proceeding governed by this part, whether in response to a subpena or by request or permission of DOT, may be accompanied, represented and advised by counsel and may be examined by his own counsel after other questioning.

(c) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpena or by request or permission of DOT, may retain or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or a copy of any transcript made of his testimony.

§ 302.12 Consolidation of proceedings.

(a) *Initiation of consolidations.* DOT upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although DOT may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and DOT will not undertake to search its docket for all applications which might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless DOT has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or considerations of issues which enlarge, expand and change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion which is not filed at or prior to the prehearing conference, or within the time prescribed by the DOT decisionmaker in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his or her failure to file such motion on time. A motion which does not relate to an application pending at the time of the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested, or on the date specifically prescribed by the DOT decisionmaker in a particular proceeding for filing of motions for consolidation or contemporaneous consideration, shall likewise be dismissed unless the movant shall clearly show good cause for his or her failure to file the application within the prescribed period.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with DOT, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act (5 U.S.C. 551 *et seq.*))

§ 302.13 Joinder of complaints or complainants.

Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The DOT decisionmaker he or she may separate or split complaints if it finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of DOT's business or the ends of justice.

§ 302.14 Participation in hearing cases by persons not parties.

(a) *Requests for expedition.* In any case to which the DOT's principles of practice, Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served as provided in § 302.8 of this part.

(b) *Participation in hearings.* Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements, or protests or memoranda in opposition or support where permitted by statute, shall be filed and served on all parties prior to the close of the hearing.

§ 302.15 Formal intervention in hearing cases.

(a) *Who may intervene.* Petitions for leave to intervene as a party will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing. Any person who has a statutory right to be made a party to such proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene. DOT does not grant formal intervention, as such, in nonhearing matters, and any interested person may file documents authorized under this part without first obtaining leave.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order which may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issue or delay the proceeding.

These criteria will be liberally interpreted to facilitate the effective participation by members of the public in DOT proceedings.

(c) *Petition to intervene*—(1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by DOT, any petition for leave to intervene shall be filed within the following time limits:

(i) In a proceeding where DOT issues a show cause order proposing fair and reasonable mail rates, such petition shall be filed within the time specified for filing notice of objection.

(ii) In all other proceedings, including mail rate proceedings where no show cause order is issued, the petition shall be filed with DOT prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(iii) A petition to intervene in any Board proceeding filed by a city, other public body, or a chamber of commerce shall be filed with DOT not later than the last day prior to the beginning of the hearing thereon.

A petition for leave to intervene which is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the peti-

tioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by DOT that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

§ 302.16 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation of the DOT or DOT decisionmaker the chief administrative law judge or an administrative law judge, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for DOT, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

§ 302.17 Continuances and extensions of time.

(a) *Generally.* Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker, the head of the Documenting Services Division or the administrative law judge assigned to the proceeding may: (1) Before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

(b) *Procedures.* Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a)(1) or (2) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.18 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein.

NOTE: This paragraph is not construed as authorizing motions in the nature of petitions for reconsideration.

(a-1) *Motions to disqualify DOT employee in review of hearing matters.* In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the periods hereinafter prescribed. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions shall be filed on or before the date answers are due pursuant to § 302.28. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions shall be filed on or before the date briefs are due pursuant to § 302.31 or § 302.1755, as applicable. Failure to file a timely motion shall be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers thereto, and rulings thereon, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except (1) where incorporation of a motion in another document is specifically authorized by a rule or order of DOT, or (2) where a document is filed which requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(c) *Answers to motions.* Within seven days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Unless the DOT decisionmaker or the administrative law judge provides otherwise, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any other responsive document is not fileable, all new matter contained in such answer shall be deemed controverted.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Disposition of motions.* The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if he or she finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, he or she may refer such motion to that person for decision. The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision.

(f) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding irrespective of the filing of an appeal or any action taken on it.

(g) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time fixed by this part (or any extension granted thereunder) to take action.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481) Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.19 Subpenas.

(a) An application for a subpena requiring the attendance of a witness or the production of documentary evidence at a hearing may be made without notice by any party to the administrative law judge designated to preside at the reception of evidence or, in the event that an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge, for action by himself or herself or by the DOT decisionmaker.

(b) A subpena for the attendance of a witness shall be issued on oral application at any time.

(c) An application for a subpena for documentary or tangible evidence shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpena sought which shall describe the documentary or tangible evidence to be subpenaed with as much particularity as is feasible.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpena shall issue the subpena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpena. It is the purpose of this section, on the one hand, to make subpenas readily available to parties, and, on the other hand, to prevent the improvident issuance of subpenas to secure evidence which is unrelated to the issues of the proceeding or wholly unreasonable in its scope.

(e) Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge or chief administrative law judge may issue on his or her own motion a subpena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpenas issued under this section shall be served upon the person to whom directed in accordance with § 302.8(b). Any person upon whom a subpena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpena with the administrative law judge designated to preside at the reception of evidence or, in the event an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. If the person to whom the motion to modify or quash the subpena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may at any time order that the return date of a subpena which he or she has elected to review be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. Applications therefor shall be addressed to the administrative law judge in writing and shall set forth the need of the moving party for such evidence and the relevancy to the issues of the proceeding. Such applications shall be processed as motions in accordance with § 302.18 except that a grant of such motion by an administrative law judge, in whole or in part, shall be immediately reviewed by the DOT decisionmaker on his or her own initiative and shall be subject to his or her final action. No application will be required for the attendance of DOT personnel or the production of records in their custody when requested by an enforcement attorney. Where a DOT employee has testified in an enforcement proceeding that he or she used documents in his or her custody, or parts thereof, to refresh his or her recollection, a ruling by the administrative law judge for their production shall be final in the absence of an objection by the enforcement attorney. In the event of such objection, the DOT decisionmaker's review will be limited to the documents, or portions thereof, to which objection is taken by the enforcement attorney.

§ 302.20 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned as a hearing officer in a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing, or

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to an administrative law judge designated to preside at the reception of evidence or, in the event that a hearing officer has not been assigned to a proceeding or is not available, to the DOT decisionmaker setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the DOT decisionmaker or the administrative law judge may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, and the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the officer, or under his or her direction, after which the deposition shall be subscribed by the witness unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the officer. If the deposition is not subscribed to by the witness, the officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to the Documentary Services Division and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will only be authorized if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories as he or she desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the stenographer, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.21 Attendance fees and mileage.

(a) *Where tender of attendance fees and mileage is a condition of compliance with subpena.* No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpena unless upon a service of the subpena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraph (b) of this section: *Provided,* That a witness summoned at the instance of DOT or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(b) *Amount of mileage and attendance fees to be paid.* (1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same fees and mileage paid to witnesses for like service in the courts of the United States, as provided in paragraphs (b)(1) (i) through (iii) of this section: *Provided,* That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the Act shall be entitled to any fees or mileage: *And provided further,* That the amounts hereinafter set forth for fees and mileage shall not be applicable for witnesses summoned to testify in Alaska.

(i) *Per diem for attendance.* There shall be tendered $20 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) *Allowance for subsistence.* In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of $16 per day for expenses of subsistence for each day of expected attendance and including the time necessarily occupied in going to and returning from the place of attendance.

(iii) *Mileage.* There shall be tendered an amount equal to 10 cents per mile for the round trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: *Provided,* That in lieu of this mileage allowance witnesses who are required to travel between the territories and possessions, or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the coach rate available at the time of reservation plus the required per diem attendance fees: *And provided further,* That in Alaska where permitted by section 403(b) of the Federal Aviation Act of 1958, as amended, the witness may, at his option, accept a pass for travel by air.

(2) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, who are summoned to testify at the instance of DOT or one of its employees or the United States or one of its agencies shall be paid in accordance with the provisions of paragraph (b)(1) of this section. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence and mileage from the Government before the close of the proceedings which they are required to attend. Only persons summoned by subpena shall be entitled to claim attendance fees, subsistence or mileage from the Government.

(3) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(4) Whenever the sums tendered to a witness are inadequate for reimbursement under the requirements of this section, and such witness has complied with the summons, he or she shall upon request within a reasonable period of time be entitled to such additional sums as may be due him or her under the provisions of this section. Whenever the sums tendered and paid to a witness are excessive under the above requirements, either because the witness traveled under the free or reduced rate provisions of section 403(b) of the Act, or for any other reasons, the witness shall upon request within a reasonable period of time refund such sums as may be excessive under the provisions of this section.

§ 302.22 Administrative law judges.

(a) *Defined.* The term "administrative law judge" as used in this part includes presiding officers, administrative law judges, or any other DOT employee assigned to hold a hearing in a proceeding.

(b) *Disqualification.* An administrative law judge shall withdraw from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

(c) *Powers.* An administrative law judge shall have the following powers, in addition to any others specified in this part:

(1) To give notice concerning and to hold hearings;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpenas and to take or cause depositions to be taken;

(5) To rule upon offers of proof and to receive relevant evidence;

(6) To regulate the course and conduct of the hearing;

(7) To hold conferences before or during the hearing, for the settlement or simplification of issues;

(8) To rule on motions and to dispose of procedural requests or similar matters;

(9) To make initial or recommended decisions as provided in § 302.27;

(10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(d) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render an initial decision but shall recommend a decision to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act unless, in rulemaking or determining applications for initial licenses, the office advises him or her that it intends to issue a tentative decision.

§ 302.22a DOT decisionmaker.

(a) *Definition.* As used in this Subchapter, the DOT decisionmaker is the official authorized to issue final decisions of the Department.

(b) *Hearing cases assigned to the senior career official.* In hearing cases assigned to the senior career official in the Office of the Assistant Secretary for Policy and International Affairs, that official is the DOT decisionmaker. In all such cases, the Administrative Law Judge shall render a recommended decision to the senior career official, who shall have all the powers of an administrative law judge and those additional powers delegated by the Secretary.

(1) Decisions of the senior carrier official are subject to review by, and at the discretion of, the Assistant Secretary for Policy and International Affairs. A notice of review by the Assistant Secretary will establish the procedures for review. Unless a notice of review is issued, a decision of the senior career official will be issued as a final order of the Department and be served 14 days after it is adopted by the senior career official. Petitions for discretionary review of decisions of the senior career official will not be entertained.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to § 302.37. Such a petition shall state clearly the basis for requesting reconsideration and shall specify any questions of national transportation policy that may be involved. The Assistant Secretary will either grant or deny the petition.

(3) Upon review or reconsideration, the Assistant Secretary may either affirm the decision or remand the decision to the senior career official for further action consistent with such order of remand.

(4) Carrier selection proceedings for international route authority and such other hearing cases as the Secretary deems appropriate will be assigned to the senior career official.

(c) *Other hearing cases.* In other hearing cases, the Assistant Secretary for Policy and International Affairs is the DOT decisionmaker. The Assistant Secretary shall have all the powers of an Administrative Law Judge and those additional powers delegated by the Secretary.

(d) *Nonhearing cases.* In all other proceedings, the Assistant Secretary for Policy and International Affairs or, in consumer protection matters, the Assistant Secretary for Governmental Affairs is the DOT decisionmaker. The Assistant Secretaries may delegate this authority in appropriate cases to subordinate officials.

(e) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise the authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

§ 302.23 Prehearing conference.

(a) *Purpose and scope of conference.* Prior to any hearings there will ordinarily be a prehearing conference before an administrative law judge, although in economic enforcement proceedings where the issues are drawn by the pleadings such conference will usually be omitted. Written notice of the prehearing conference shall be sent by the chief administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define and simplify the issues and the scope of the proceeding, to secure statements of the positions of the parties with respect thereto and amendments to the pleadings in conformity therewith, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters which the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuineness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing, etc.

The administrative law judge may require further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to a hearing by subpena issued in accordance with the provisions of § 302.19 as though at a hearing. Applications for the production prior to hearing of documents in DOT's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.19(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also on his or her own motion or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(b) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection which has not been met by a revision of the report if they are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.24 Hearing cases.

(a) *Definition.* A hearing case means any proceeding (including an enforcement case) that the Department has noticed will be conducted on the record after oral evidentiary hearing subject to 5 U.S.C. 556 and 557.

(b) *Notice.* The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

(c) *Evidence.* Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious. Evidence shall be presented in written form by all parties wherever feasible, as the administrative law judge may direct.

(d) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(e) *Exceptions.* Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(f) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(g) *Exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(h) *Substitution of copies for original exhibits.* In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(i) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy, of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.

(j) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified; and

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker; and

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compli-

ance with paragraphs (i) (1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the above requirement with the consent of the parties.

(k) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge.

(l) *Transcripts of hearings.* (1) Hearings shall be recorded and transcribed, under supervision of the administrative law judge, by the reporting firm under contract with DOT. Copies of the transcript shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(2) The administrative law judge shall determine whether "ordinary transcript" or "daily transcript" (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and DOT will pay the reporting firm the full cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(i) The nature of the proceeding itself;

(ii) The DOT decisionmaker's needs as well as the reasonable needs of the parties; and

(iii) The requirements of a fair hearing.

(3) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with DOT, the reporting firm will be obligated to furnish to the DOT daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(4) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which DOT currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(5) Copies of transcripts ordered by parties other than DOT shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(m) *Corrections to transcript.* Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with the Documentary Services Division, within ten (10) days after receipt of the completed transcript by DOT. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the stenographic record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

(n) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and its administrative law judges to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to Subpart B of this part. Each such category shall include any document antedating final DOT decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Official Guide of the Airways for each month prior to and including April 1943; Universal Airline Schedules for each month from May 1943 to September 1944, inclusive; American Aviation Air Traffic Guide for each month from October 1944 to August 1948, inclusive; and Official Airline Guide.

2. Official Guide of the Railways and Russell's Official National Motor Coach Guide.

3. Book of Official CAB Airline Route Maps and Airport to Airport Mileages published by Air Transport Association of America.

4. Shuler Guide and Official Airline Guide Quick Reference Edition.

5. All schedules and amendments thereof, and all tariffs and amendments thereof, of all carriers, on file with DOT.

6. Air Carrier operating certificates or applications therefor, of all carriers, together with any requests for amendment thereof.

7. Monthly reports, Forms 2380 and 2780, for each month through December 1946, and monthly and quarterly reports, Forms 41 and 41(a) (including monthly and annual reports required to be filed by all carriers in connection therewith), filed with DOT.

8. Recurrent Reports of Mileage and Traffic Data of all Domestic Airline Carriers from 1945 and all similar reports issued by the Civil Aeronautics Board or DOT.

9. Certified Air Carrier Traffic Statistics from 1955, prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of statistics issued by the Civil Aeronautics Board or DOT.

10. Recurrent Reports of Financial Data of all Domestic Airline Carriers from 1947 through the quarter ended September 30, 1953; issued by the Civil Aeronautics Board, and all such other similar recurrent reports issued by the Civil Aeronautics Board or DOT.

11. Certificated Air Carrier Financial Data from the quarter ended December 31, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of data issued by the Civil Aeronautics Board or DOT.

12. Annual Airline Statistics, Domestic Carriers, fiscal years 1936–1941; Annual Airline Statistics, Domestic Carriers, calendar years 1938–1947; prepared by the Bureau of Pricing and Domestic Aviation Civil Aeronautics Board; and all such other similar compilations of statistics issued by the Civil Aeronautics Board or DOT.

13. Quarterly Report of Air Carrier Operating Factors, for the quarter ended September 30, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other reports for quarterly periods as may be made available to the public by the Civil Aeronautics Board or DOT.

14. Passenger, mail, express, and freight data submitted to the Board on Form 2787 by all carriers for any months subsequent to March 1955 and any similar data submitted to DOT.

15. Airline Traffic Surveys, compiled by the Civil Aeronautics Board, from September 1946, and any other such surveys made available to the public by the Civil Aeronautics Board or DOT.

16. The publication Competition Among Domestic Air Carriers, March 1-14, 1955, compiled by the Civil Aeronautics Board and published by the Air Transport Association of America, and any other compilations of similar data made available to the public by the Civil Aeronautics Board or DOT.

17. Service Mail Pay and Subsidy for United States Certificated Air Carriers from 1955, published by the Civil Aeronautics Board, and any supplemental data and subsequent issues published by the Civil Aeronautics Board or DOT.

18. Airport Activity Statistics of Certificated Air Carriers, from December 31, 1955; compiled by the Civil Aeronautics Board, and published by Air Transport Association of America, and any subsequent issues thereof published by DOT.

19. Enplaned Airline Traffic, by community, by year, 1948-1951; Air Commerce Traffic Pattern, fiscal years 1953-1955 and calendar years 1952-1955, published by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereof published by the Federal Aviation Administration.

20. Population Volumes I and II of the Eighteenth (1960) Census of the United States, issued by the Census Bureau, Department of Commerce; and similar publications of the Census Bureau relating to the Seventeenth (1950) Census.

21. The Rand McNally Commercial Atlas and Marketing Guide, from 1958, and the Rand McNally Road Atlas, United States, Canada, and Mexico, from 1956.

22. Survey of Buying Power, from 1955, published by Sales Management Magazine.

23. Volumes II and III of the Census of Manufacturers, 1954, issued by the Bureau of Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1947 and 1958 Census of Manufacturers.

24. Volumes II, IV and VI of the Census of Business, 1954, issued by the Bureau of the Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1948 and 1958 Census of Business.

25. Federal Airways Air Traffic Activity, from 1953–1956 (fiscal year) issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and subsequent editions thereof issued by the Federal Aviation Administration.

26. National Airport Plan, from 1956, Civil Aeronautics Administration, U.S. Department of Commerce and subsequent editions thereof issued by the Federal Aviation Administration.

27. Record of Airport Facilities, Form ACA-29A, issued by the Civil Aeronautics Administration, U.S. Department of Commerce and by the Federal Aviation Administration.

28. International Section, Airline Traffic Surveys prepared by the Civil Aeronautics Board from March and September 1959, and any such surveys issued or otherwise made available to the parties by the Civil Aeronautics Board or published privately.

29. The ABC World Airways Guide, Thomas Skinner and Co., Ltd., from June 1950.

30. ICAO Statistical Summary, Preliminary Issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.

31. Foreign-Commerce Yearbook, from 1951, U.S. Department of Commerce, office of International Trade.

32. Statistical Abstract of the United States, from 1953, U.S. Department of Commerce, Bureau of Census.

33. Yearbook of International Trade Statistics, from 1956.

34. Annual Reports of the Immigration and Naturalization Service, U.S. Department of Justice, from fiscal year ended June 30, 1945.

35. Official Steamship and Airways Guide International Transportation Guides, Inc., from June 1945.

36. The Airman's Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Administration.

37. Plant and Product Directory of the 500 Largest U.S. Industrial Corporations, from 1961, published by Time Inc.

38. Thomas' Register of American Manufacturers, from 1955, published by Thomas Publishing Company.

39. First and Second Class Post Offices, July 1, 1939–July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.

40. Quarterly Report on Federal Aid to Highways, from March 1960, issued by the Bureau of Public Roads of the U.S. Department of Commerce.

41. All forms and reports required by the Post Office Department to be filed by air carriers certificated to transport mail.

42. All orders of the Postmaster General designating schedules for the transportation of mail.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board or DOT.

44. CAB Forms 242, 243, 244, and 244A (including all monthly, quarterly, semiannual, and annual reports required to be filed by carriers in connection therewith), filed with the Board or DOT.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (m)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act.

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (m)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed.

§ 302.25 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either of his or her own motion, or at the request of a party, permit the presentation of oral argument. He or she may impose such time limits on the argument as he or she may determine, having regard for other assignments for hearing before him or her. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the DOT decisionmaker for consideration in deciding the case.

§ 302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the record is certified to the DOT decisionmaker without the preparation of an initial or recommended decision by the administrative law judge.

§ 302.27 Delegation to administrative law judges and action by administrative law judges after hearing.

(a) *Delegation of authority to make the agency decision subject to discretionary review.* Pursuant to the authority conferred on DOT under section 1601(b)(1) of the Federal Aviation Act of 1958, as amended, there is hereby delegated to each administrative law judge assigned to a particular case subject to this part the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without a recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters which have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.18. The term "initial decision," as used in this part, shall encompass the administrative law judge's decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Action by administrative law judge after hearing.* (1) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file proposed findings and conclusions with the DOT decisionmaker and supporting briefs.

(2) Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the administrative law judge shall take the following action:

(i) *Cases subject to section 801 of the Act.* In cases where the action of the Department is subject to the approval of the President pursuant to section 801 of the Act, the administrative law judge shall render a recommended decision orally on the record or in writing.

(ii) *Other matters.* If the proceeding relates to any matter not provided for in paragraph (b)(2)(i) of this section, the administrative law judge shall render an initial decision in writing.

(c) *Effect of initial decision.* Unless a petition for discretionary review is filed pursuant to § 302.28, exceptions are filed pursuant to § 302.1754, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department 30 days after service thereof. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision is stayed until the further order of the DOT decisionmaker.

§ 302.28 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but of the sound discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within 21 days after service thereof, except that the DOT decisionmaker may fix a different period in any decision involving a foreign air carrier where the action of DOT is subject to the approval of the President pursuant to section 801 of the Act. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, DOT rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but which the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker or the Chief Administrative Law Judge, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answer.* Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than 20 pages.

(c) *Orders declining review.* DOT orders declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of DOT. A petition for reconsideration of a DOT order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of DOT in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may exercise his or her right of review upon petition for review or on his or her own initiative. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review which will:

(i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review, and/or matters which the DOT decisionmaker desires to review on his or her own initiative. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.31, and considered by the DOT decisionmaker.

(ii) Specify the portions of the administrative law judge's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.

(iii) Designate the parties to the review proceeding.

§ 302.29 Tentative decision of DOT.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any proposed findings and conclusions submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision may be filed, the time within which briefs in support of the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed (which in no event shall be less than 10 days), it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) Notwithstanding the provisions of paragraph (a) of this section, in rule making proceedings or proceedings determining applications for initial licenses, the DOT decisionmaker may omit a tentative decision in any case in which he or she finds upon the record that due and timely execution of DOT's functions imperatively and unavoidably so requires. The DOT decisionmaker may also, in his or her discretion, omit a tentative decision in proceedings under Subpart Q. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.22a.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481 (Administrative Procedure Act) 5 U.S.C. 551 *et seq.*))

§ 302.30 Exceptions to tentative decisions of DOT.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several repetitive exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto. *Provided, however,* That exceptions shall specify any matters of law, fact or policy which were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion which is not expressly made the subject of an exception in compliance with the provisions of this section. *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.31 Briefs before decisionmaker.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial decisions or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.28(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within 30 days after date of service of the order granting discretionary review. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker or the administrative law judge (where the administrative law judge's decision was not made under delegated authority) may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs*—(1) *Contents.* Each brief shall discuss every point of law, fact or precedent which the party submitting it is entitled to raise and which it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed 5 pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading: *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with the Documentary Services Division a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length and index.* Briefs shall comply with the formal specifications set forth in § 302.3(b). Except by permission or direction of the DOT decisionmaker, briefs shall not exceed 50 pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case "map" means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation. Any brief that exceeds 10 pages shall contain a subject index of its contents, including page references.

§ 302.32 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he shall request leave to make such argument in his exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be presented to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued. All such material shall be served on all parties to the proceeding and eight copies transmitted to the Documentary Services Division at least five (5) calendar days in advance of the argument. As used herein "material" includes, but is not limited to, maps, charts included in briefs, and exhibits which are enlarged and used for demonstration purposes at the argument, but does not include the enlargements of such exhibits.

§ 302.33 Waiver of procedural steps after hearing.

The parties of any proceeding may agree to waive any one or more of the following procedural steps provided in §§ 302.25 through 302.32: Oral argument before the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge or for the DOT decisionmaker, a recommended decision of the administrative law judge, a tentative decision of the DOT decisionmaker, a petition for discretionary review of or exceptions to an initial decision or recommended decision, and the filing of briefs with the DOT decisionmaker, or oral argument before the DOT decisionmaker.

§ 302.35 Shortened procedure.

In cases where a hearing is not required by law, §§ 302.23 through 302.33, relating to prehearing, hearing, and post-hearing procedures, shall not be applicable except to the extent that DOT shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the ends of justice.

§ 302.36 Final decision of DOT.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order which will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed "final orders" within the purview of § 302.37(a), in the manner provided by § 302.22a.

§ 302.37 Petitions for reconsideration or review by the DOT decisionmaker.

(a) *DOT orders subject to reconsideration; time for filing.* Unless an order or a rule of the Department specifically provides otherwise, any interested person may file a petition for reconsideration, of any interlocutory order issued by the Department which institutes a proceeding. Any party to a proceeding, unless an order or rule of the Department specifically provides otherwise, may file a petition for reconsideration, rehearing, or reargument of (1) final orders issued by the Department, or (2) an interlocutory order which defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department. Unless the time is shortened or enlarged by the Department, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, or a final decision described in § 302.1757 within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences which would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto which exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by the Office of the Documentary Services.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition which has been considered or denied will not be entertained.

§ 302.38 Petitions for rulemaking.

Any interested person may petition DOT for the issuance, amendment, modification and repeal of any regulation, subject to the provisions of Part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 et seq.)

§ 302.39 Objections to public disclosure of information.

(a) *General.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of DOT to the public. (49 CFR 7.1 et seq.)

(b) *Information contained in paper to be filed.* Any person who objects to the public disclosure of any information contained in any paper filed in any proceeding, or in any application, report, or other document filed pursuant to the provisions of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the DOT thereunder, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed, separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation "Classified or Confidential Treatment Requested Under § 302.39." At the time of filing such paper, or when the objection is made by a person not himself or herself filing the paper, application, report or other document, within five (5) days after the filing of such paper, the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (e) of this section, or in accordance with the procedure outlined in paragraph (d) of this section if objection is made by a Government department or a representative thereof. Notwithstanding any other provision of this section, copies of the filed paper and of the motion need not be served upon any other party unless so ordered by the DOT.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and lay representative of each party as the administrative law judge or the person before whom the deposition is being taken, as the case may be, shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Classified or Confidential Treatment Requested Under § 302.39 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion, except as hereinafter provided in paragraph (d) of this section, in accordance with the procedure outlined in paragraph (e) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the DOT.

(d) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department, or representative thereof, under paragraph (b) or (c) of this section, the department making such objection shall be exempted from the provisions of paragraphs (b), (c), and (e) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, or person representing said department, if it so desires, may file a memorandum setting forth the reasons on the basis of which it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

(e) *Form of motion to withhold information from public disclosure.* Subject to the exception of paragraph (d) of this section, no information covered by paragraphs (b) and (c) of this section need be withheld from public disclosure unless written objection to such disclosure is filed with the DOT in accordance with the following procedure:

(1) The motion shall be headed with the title and docket number of the proceeding and shall be signed by the objecting person, any duly authorized officer or agent thereof, or by counsel representing such person in the proceeding.

(2) The motion shall include:

(i) A description of the information sought to be withheld, sufficient for identification of the same;

(ii) A statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)-(9); and

(iii) And a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(3) Such motion shall be filed with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed.

If such motion relates to contracts, agreements, understandings, or arrangements an executed original copy and two copies of such motion shall be filed.

(f) *Motions referred to DOT.* The order of DOT containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which order shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the DOT 's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by DOT, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the DOT's order.

(g) *Objections in proceeding before the DOT.* Notwithstanding any of the provisions of this section, whenever the objection to disclosure of information shall have been made, in the first instance, before the DOT itself, the written motion of objection contemplated by paragraphs (b), (c), and (e) of this section shall not be necessary but may be submitted if the parties so desire or if the DOT, in a particular case, shall so direct.

§ 302.40 Saving clause.

Repeal, revision or amendment of any Economic Regulation of the DOT shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart B—Rules Applicable to Enforcement Proceedings

§ 302.200 Applicability of this subpart.

(a) *In general.* This subpart contains the specific rules that apply to DOT proceedings to enforce the act and the rules, regulations, orders and other requirements issued by DOT. Subpart A of this part contains other rules that apply to these proceedings.

(b) *Informal complaints.* Informal complaints may be made in writing with respect to anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto without compliance with this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.201 Formal complaints.

Any person may make a formal complaint to the Assistant General Counsel for Aviation Enforcement and Proceedings about any violation of the economic regulatory provisions of the act or of DOT's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The filing of a complaint shall result in a formal enforcement proceeding only if the Assistant General Counsel for Aviation Enforcement and Proceedings issues a notice instituting an enforcement proceeding as to all or part of the complaint under § 302.206(a) or the Deputy General Counsel does so under § 302.206(b). A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel for Aviation Enforcement and Proceedings. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.18.

§ 302.202 [Reserved]

§ 302.203 Insufficiency of formal complaint.

In any case where the Assistant General Counsel for Aviation Enforcement and Proceedings is of the opinion that a complaint does not sufficiently set forth the material required by any applicable rule, regulation or order of the DOT, or is otherwise insufficient, he or she may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

§ 302.204 Third-party complaints.

(a) A third-party complaint, and any amendments thereto, submitted pursuant to § 302.201 shall be served by the person filing such documents upon each party complained of, upon the

Deputy General Counsel, and upon the Assistant General Counsel for Aviation Enforcement Proceeding.

(b) Within fifteen (15) days after the date of service of a third-party complaint, each person complained of shall file an answer in conformance with and subject to the requirements of § 302.207(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for Aviation Enforcement and Proceedings for good cause shown.

(c) A person complained against in a third-party complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.205 Procedure when no enforcement proceeding is instituted.

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Assistant General Counsel for Aviation Enforcement and Proceedings shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.206(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of DOT 30 days after service thereof.

§ 302.206 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel for Aviation Enforcement and Proceedings, there are reasonable grounds to believe that any provision of the Act, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel for Aviation Enforcement and Proceedings may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

(b) The Assistant General Counsel for Aviation Enforcement and Proceedings may at any time move, upon a showing of good cause, for an extension of the time within which to act upon a third-party complaint. Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings has failed to act on a third-party complaint within 60 days of the date when the answer is due, or within such extension of that period as may have been granted, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute a proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(c) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.206a Assessment of civil penalties.

(a) Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in an enforcement proceeding, the Deputy General Counsel shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting an enforcement proceeding or in a separate document.

(b) Within 15 days after service of a notice proposing assessment of civil penalties, the respondent shall file a response specifically presenting any matters he or she intends to rely on in opposition to or mitigation of such civil penalties. The response may be contained in an answer filed under § 302.207.

(c) In any proceeding in which civil penalties are sought, the initial and final decisions shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§ 302.207 Answer.

(a) Within 15 days after the date of service of a notice issued pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of an answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with DOT in accordance with § 302.17.

(b) All answers shall conform to the requirements of § 302.8(a)(2) and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the person complained of is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted.

§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Department, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.209 Reply.

The DOT decisionmaker (or the administrative law judge) may, in his or her discretion, require or permit the filing of a reply in appropriate cases, otherwise no reply shall be filed.

§ 302.210 Parties.

The parties to an enforcement proceeding shall be the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

§ 302.210a Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge, upon his or her own initiative, or upon motion of any party, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.211 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the DOT decisionmaker or the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.23.

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

(a) At any time after answer has been filed, any party may file with DOT and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters. Service of such request and answering statement shall be made as provided in § 302.8. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement or any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

(b) At any time after answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within 7 days after service of the motion.

(c) Parties may petition the DOT decisionmaker to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.28.

§ 302.213 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge or the DOT decisionmaker shall give the parties reasonable written notice of the time and place of the hearings.

§ 302.214 Appearances by persons not parties.

With consent of the administrative law judge or the DOT decisionmaker, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with consent of the administrative law judge or the DOT decisionmaker, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.215 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within 10 days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.216 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the act or any requirement thereunder found by DOT or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.217 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.18. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.218 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding in which an order of DOT has been issued pursuant to section 1002(c) of the Act, or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 1007, believes that changed conditions of fact or law, or the public interest, require that said order or judicial action be modified, or set aside, in whole or in part, such party may file with DOT a motion requesting that DOT take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. DOT shall dispose of the motion by such procedure as it deems appropriate.

Subpart C—Rules Applicable to Mail Rate Proceedings

§ 302.300 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by DOT for foreign air transportation and air transportation between points in Alaska. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of DOT.

§ 302.301 Parties to the proceeding.

The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom DOT permits to intervene. (See § 302.15.)

FINAL MAIL RATE PROCEEDINGS

§ 302.302 Participation by persons other than parties.

In addition to participation in hearings in accordance with § 302.14, persons other than parties may, within the time fixed for filing notice of objections to an order to show cause in a mail rate proceeding as provided in § 302.305, submit a memorandum of opposition to, or in support of, the position taken in the petition or order.

Such memorandum shall not be received as evidence in the proceeding.

§ 302.303 Institution of proceedings.

Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the Postal Service, or upon the issuance of an order by DOT.

(a) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rate, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(b) In any case where a carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the Department, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(c) All petitions, amended petitions, and documents relating thereto shall be served upon the Postal Service by sending a copy to the Assistant General Counsel, Transportation, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the Postal Service shall consist of a statement in the document that the person filing it has served a copy on the Assistant General Counsel, Transportation, as required by this section. The petition need not be accompanied by any further proof of service, but upon setting any petition down for public hearing, the Department will cause notice of such hearing to be given to such interested persons as it deems appropriate in a particular case.

(d) Answers to petitions shall be filed within 20 days after service of the petition.

PROCEDURE WHEN AN ORDER TO SHOW CAUSE IS ISSUED

§ 302.304 Order to show cause.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT may issue an order directing the respondent to show cause why it should not adopt such provisional findings and conclusions, and such rates, as may be specified in the order to show cause.

§ 302.305 Objections and answer to order to show cause.

(a) Any person having objections to the provisional rates specified in such order shall file with the Department a notice of objection within ten (10) days after the date of service of such order.

(b) If such notice is filed as aforesaid, written answer and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause. The Department may specify different times for filing a notice of objection or an answer. An answer to an order to show cause shall contain specific objections, and exhibits in support thereof, and shall set forth the findings and conclusions, the rates, and the supporting exhibits which would be substituted for the corresponding items in the Statement of Provisional Findings and Conclusions, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene shall be treated as a memorandum filed under § 302.302.

§ 302.306 Effect of failure to timely file notice and answer raising material issue of fact.

If no notice, or, if after notice, no answer is filed within the designated time, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision of the Department fixing rates, and, in such case, or if an answer timely filed raises no material issue of fact, the Department may thereupon, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the fair and reasonable rate or rates as specified in the order to show cause.

§ 302.307 Procedure when material issue of fact is timely raised.

If an answer raising a material issue of fact is filed within the time designated in the Department's order, a prehearing conference and hearing shall be held unless waived by all parties. The issues shall be limited to those specifically raised by the answer, except that at the prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to a full and fair determination of a fair and reasonable rate. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.308 Evidence.

All direct evidence shall be in writing and shall be filed in exhibit form in advance of the hearing unless, for good cause shown, the administrative law judge otherwise directs.

PROCEDURE WHEN NO ORDER TO SHOW CAUSE IS ISSUED

§ 302.309 Hearing to be ordered.

When no order to show cause is to be issued by the Department, the Department will order a hearing before an administrative law judge similar to that provided for in §§ 302.307 and 302.308, except that the issues at such hearing shall be formulated initially at a prehearing conference.

TEMPORARY RATE PROCEEDINGS

§ 302.310 Procedure for fixing temporary service and subsidy mail rates.

(a) At any time during the pendency of a proceeding for the determination of final mail rates, the Department, upon its own initiative, or on petition by the carrier whose rates are in issue or the Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

(b) Temporary service mail rates: The procedure for determining temporary mail rates involving an issue as to the service mail rates payable by the Postal Service pursuant to section 406(c) of the Act shall be the same as for the determination of final mail rates, except that:

(1) Notice of objections to the Department's show cause order proposing temporary service mail rates must be filed by any party or petitioner for intervention within 8 days, and an answer within 15 days, of the time such order is served;

(2) Failure to file notice of objections within the 8-day period shall be deemed to be a waiver of all further procedural steps before final decision, including hearing and initial or tentative decision, and the proceeding will stand submitted to the DOT decisionmaker for final decision.

(3) In the absence of a convincing showing that it will result in substantial prejudice to any party or delay the proceeding, the administrative law judge shall require the parties to submit all their testimony in writing and shall closely limit cross-examination to the essential issues (bearing in mind the purpose and urgency of fixing temporary mail rates together with the fact that such temporary rates are subject to downward or upward adjustment upon the fixing of final rates), and shall in all other respects urgently expedite the proceeding.

INFORMAL MAIL RATE CONFERENCE PROCEDURE

§ 302.311 Invocation of procedure.

Conferences between DOT employees, representatives of air carriers, the Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

§ 302.312 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers the Department has in the processing of rate cases not involving a rate conference. The employee function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employee's analyses and recommendations.

§ 302.313 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deems his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.314 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for 90 days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust; (2) shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the Department; and (3) shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. The word "information", as used in paragraph (b) of this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.

(b) *Signed statement required.* Every representative of a carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any carrier, which has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential every participant, as defined in this section, shall file a verified compliance report with the Documentary Services Division stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include (1) any representative of any carrier and any representative of the Postmaster General actually present at the conference; (2) the carrier and the officers of any carrier which has had a representative at the conference; (3) the directors of any carrier, which has had a representative at the conference, the members of any firm of attorneys or consultants, which has had a representative at the conference, and the members of the Postmaster General's staff, who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.[3]

§ 302.315 Information to be requested from carrier.

With respect to the rate for the future period, the carrier will be requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment which will be required to perform the operations for a full future year. Full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the carrier's past experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the carrier shall be certified by a responsible officer.

§ 302.316 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the carrier what might be termed a statement of exceptions showing areas of differences. Where practicable, the carrier may submit its answer to these exceptions. Conferences will then be scheduled to work out a clear understanding and resolution of the issues and facts from the standpoint of sound ratemaking principles.

§ 302.317 Availability of data to Postal Service.

The representatives of the Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the carrier, and a reasonable time shall be allowed to get acquainted with the facts and issues and to make any presentation deemed necessary. *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the Postal Service pursuant to section 406(c) of the Act representatives of the Postal Service shall be furnished with copies of data under this provision only upon their written request.

§ 302.318 Post-conference procedure.

The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Department. The form, content and time of the staff's presentation to the Department are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The Department will grant such requests whenever it deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the act and the rules of practice.

§ 302.319 Effect of conference agreements.

No agreements or understanding reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that rate conferences were held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that upon the filing of an answer by any party to the rate proceeding all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.23.

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[3] Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the DOT employees pursuant to applicable law.

§ 302.320 Waiver of §§ 302.313 and 302.314.

After the termination of a mail rate conference hereunder, the carrier, whose rates were in issue, may petition the Department for a release from the obligations imposed upon it and all other persons by §§ 302.313 and 302.314. The Department will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the Department will grant or deny the request without assigning reasons therefor.

§ 302.321 Time of commencing and terminating conference.

At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conferences shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

Subpart D—Rules Applicable to Exemption Proceedings

§ 302.400 Applicability.

This subpart sets forth the rules applicable to proceedings for exemptions under sections 101(3), 416(b)(1), 416(b)(3), and 416(b)(7) of the Federal Aviation Act. It also provides for the granting of emergency exemptions. The provisions of Subpart A of this part also apply to such proceedings where not inconsistent with this subpart. Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

§ 302.401 Filing of application.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§ 302.3 and 302.4.

(b) Applications for exemption from section 401 or 402 of the Act (and section 403 of the Act if accompanying the former) which involve 10 or fewer flights may be submitted to the Licensing Division, Office of Aviation Operations on CAB Form 302 or the DOT replacement form. However, that form may not be used for:

(1) Applications filed under section 416(b)(7) of the Act;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from DOT, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the DOT for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than 10 flights; or

(4) Any other application for which the DOT decides the requirements of §§ 302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(c) Applications for exemption from section 403 of the Act, tariffs (except for waivers filed under Subpart Q of Part 221 of this chapter), or DOT regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to the Documentary Services Division, Office of the General Counsel. Upon a showing of good cause, the application may also be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The DOT may require such applications to be docketed if appropriate. The DOT will list the names and addresses of all persons filing such applications, and will briefly describe the authority sought, in its weekly list of applications filed.

§ 302.402 Contents of application.

(a) *Title.* An application filed under § 302.401(a) shall be entitled "Application for Exemption," and shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Act or the rule, regulation, term, condition, or limitation from which exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 401 or 402 of the Act should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations which the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the DOT to officially notice;

(ii) Affidavits, or statements under penalty of perjury, establishing any other facts the applicant wants the Board to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 401 or 402 of the Act (except exemptions under section 416(b)(7)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been establishing by the DOT and cite the pertinent finding. If the fact of reciprocity has not been established by the DOT, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 416(b)(7) of the Act shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 401 of the Act;

(2) All possible efforts have been made to accommodate the traffic requested by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, that are under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid undue hardship for the traffic in the market that cannot be accommodated by air carriers holding certificates under section 401 of the Act; and

(4) In any case where in inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an undue advantage to any party to the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by Part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by § 302.403.

§ 302.403 Service of application.

(a) *Manner of service.* An application for exemption shall be served as provided by § 302.8.

(b) *General requirements.* Except for an application for exemption from sections 403 and 404 of the Act, an applicant shall serve on the persons listed in paragraph (c) of this section a notice that the application has been filed, and, upon request, shall promptly provide those persons with copies of the application and any supporting documents. (Applicants filing CAB Form 302, or the DOT replacement form may serve a copy of the form instead of a notice.) The notice must clearly state the authority sought, the due date for responsive pleadings, and that copies of the application will be supplied upon request. Responsive pleadings shall be filed in accordance with paragraph (c) of this section.

(c) *Persons to be served.* (1) Applicants for scheduled interstate or overseas air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules in the "Official Airline Guide" or the "Air Cargo Guide" for the city-pair market(s) specified in the application, (ii) local airport authorities at each point specified in the application, and (iii) any other person who has filed a pleading in a related proceeding under section 401 or 416 of the Act.

(2) Applicants for scheduled foreign air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the "Official Airline Guide" or in the "Air Cargo Guide" and (ii) any other person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act. However, applicants that file less than 16 days prior to the proposed start of service must also serve (i) those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and (ii) those persons who may be presumed to have an interest in the subject matter of the application.

(d) *Additional service.* The DOT may, in its discretion, order additional service made on any other person.

§ 302.404 Posting of application.

A copy of every application for exemption shall be posted in the Documentary Services Division and listed in the DOT's weekly list of applications filed.

§ 302.405 Dismissal or rejection of incomplete application.

(a) Dismissal or rejection. The DOT may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) Additional data. The DOT may require the filing of additional data with respect to any application for exemption, answer, or reply.

§ 302.406 Answers to applications for exemption.

Within 15 days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the DOT is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§ 302.407 Replies to answers.

Within seven days after the last day for filing an answer, an applicant may file a reply to one or more answers.

§ 302.408 Request for hearing.

The DOT will not normally conduct formal hearings concerning applications for exemption. However, the DOT may, in its discretion, order a hearing on an application. Any applicant, or any party opposing an application, may request a hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the DOT orders a hearing, the procedures in Subpart A of this part shall apply.

§ 302.409 Exemptions on the Department's initiative.

The DOT may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§ 302.410 Emergency exemptions.

(a) *Applicability.* When required by the circumstances and consistent with the public interest, the DOT may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the DOT may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b) *Applications.* (1) Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part (except as provided in this section and in § 302.402(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The DOT may require additional information from any applicant before acting on an application.

(2) The DOT will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three business days of the original request.

(c) *Notice.* Except when the DOT decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in § 302.403(c) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the DOT.

Subpart E—Rules Applicable to Proceedings with Respect to Rates, Fares and Charges

§ 302.500 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT.

§ 302.501 Institution of proceedings.

A proceeding to determine rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by DOT.

§ 302.502 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the carrier against whose tariff provision the petition or complaint is filed.

§ 302.503 Dismissal of petition or complaint.

If DOT is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.504 Order of investigation.

The Department on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and assigning the proceeding for hearing before an administrative law judge. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.505 Complaints requesting suspension of tariffs—answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 1002(j) of the Act shall fully identify the tariff and include reference (1) to the issued or posting date, (2) to the effective date, (3) to the name of the publishing carrier or agent, (4) to the DOT number, and (5) to specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 1002(j) of the Act, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the Department and to the carrier against whose tariff provision the complaint is made. Such a telegraphic complaint shall state the grounds relied upon, and must immediately be confirmed by complaint filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§ 302.506 Burden of going forward with the evidence.

At any hearing involving a change in a rate, fare, or charge for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rate fare, or charge, the burden of going forward with the evidence shall be upon the person proposing such change to show that the proposed changed rate, fare, charge, classification, rule, regulation or practice is just and reasonable, and not otherwise unlawful.

§ 302.508 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.505, with respect to tariffs which do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for DOT, in which event the period for filing shall be extended to the next successive day which is neither a Saturday, Sunday, nor holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.16.

Subparts F-H—[Reserved]

Subpart I—Rules Applicable to Route Proceedings under Sections 401 and 402 of the Act

GENERAL PROVISIONS

§ 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (Parts 201 and 211 for the form of applications) and orders of DOT.

INITIATION OF ROUTE PROCEEDINGS

§ 302.915 Initiation of route proceedings by DOT order.

(a) *Purpose and policy.* The purpose of this section is to establish a procedure for the initiation of proceedings involving particular routes or geographic areas, in addition to existing procedures under Subpart A, so that the Department may select the one best suited to the efficient and expeditious disposition of route proceedings.

(b) *Order instituting proceedings.* The Department may initiate a route proceeding by issuing an order of investigation or an order to show cause which, respectively, defines the scope of the issues in the proceeding, or consolidates pending applications and proceedings for simultaneous hearing, or institutes investigations under section 401(g) or 402(f) of the Act directed to the amendment of outstanding certificates of public convenience and necessity and foreign air carrier permits, and specifies other matters included in the proceeding.

(c) *Pleadings in response to Department order instituting proceedings.* Any person having a substantial interest may respond to the Department's order instituting a proceeding by filing with the Department a written answer, or a motion pursuant to § 302.12, or both, within the period of time specified in said order. Such answer or motion shall set forth all objections and proposals which such persons may have with respect to the geographic scope of the proceeding or the scope of the issues, as respectively defined in such order. Such answer or motion shall be in lieu of petitions for reconsideration of said order under § 302.37. Any such objection or proposal which is not set forth in such answer or motion shall be deemed to have been waived. Any person who fails to file a timely answer or motion in response to the Department's order shall also be deemed to have waived his or her right to have his or her own application consolidated or contemporaneously considered with those falling within the geographic scope of the proceeding or the scope of the issues therein, as respectively defined in said order: *Provided, however,* That where any further order of the Department adds to the geographic scope of a proceeding or the scope of the issues therein beyond that defined in the Department's order instituting such proceeding, failure to file an answer or motion addressed to the Department's first order shall not preclude the filing of a petition under § 302.37, or of a motion under § 302.12, addressed exclusively to the additional scope or issues.

(d) *Answers to motions.* Answers in support of or in opposition to motions as mentioned in paragraph (c) of this section may be filed within seven (7) days after service of such motions or within such other period as may be specified in the Department's order.

CONDUCT OF ROUTE PROCEEDINGS

§ 302.930 Evidence in route proceedings.

Route authority not specifically applied for. Applicants for certificate authority under section 401 of the Act may not introduce, in support of awards to them of such authority, evidence that does not support service to the points, routes, or areas specifically described in their applications.

Subpart J—Rules Applicable to Proceedings Involving Charter Air Carriers

§ 302.1001 Applicability.

This subpart sets forth procedural rules specifically applicable to certain proceedings involving charter air carriers. For information as to other applicable rules, reference should be made to Subparts A and B of this part, to the Federal Aviation Act of 1958, as amended, and to the substantive rules and orders of the Department. See especially Part 208 of this chapter (Economic Regulations).

§ 302.1002 Definition.

As used in this part, "charter air carrier" means a person holding operating authority issued pursuant to section 401(d)(3) or 417 of the Federal Aviation Act of 1958, as amended.

IMMEDIATE SUSPENSION OF OPERATING AUTHORITY

§ 302.1011 Rules governing proceedings.

Proceedings for suspension, modification or revocation of a charter air carrier certificate pursuant to section 401(n)(5) of the Act, shall be governed by §§ 302.1012 to 302.1017 and, as to matters not provided for in said sections, by Subparts A and B of this part.

NOTE: Secs. 302.1012 to 302.1017 do not apply to proceedings for modification, suspension or revocation not initiated under, or by reference to, the provisions of section 401(n)(5) of the Act.

§ 302.1012 Order of suspension.

In any case in which the Department determines that the failure of a charter air carrier to comply with the provisions of paragraphs (q) or (r) of section 401 of the Act or regulations or orders of the Department thereunder requires, in the interest of the rights, welfare or safety of the public immediate suspension of such carrier's certificate or other operating authority as the case may be, the Department will issue, without notice or hearing, an order of suspension which will set forth:

(a) The duration of the suspension, which initially will be for not more than 30 days;

(b) The specific provision or provisions of section 401 (q) or (r), or of the regulations or orders of the Department thereunder with which the carrier has failed to comply together with the manner of such failure;

(c) A determination that such failure requires the immediate suspension, in whole or in part as the case may be, of the carrier's operating authority in the interest of the rights, welfare, or safety of the public;

(d) A statement that the order shall constitute a complaint instituting a formal economic proceeding on which a hearing shall be held to determine whether the charter air carrier's operating authority should be modified, suspended or revoked;

(e) A statement as to which attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings are to be made a party to the proceeding.

§ 302.1013 Answer of carrier.

(a) *Time for filing, and contents.* Within 7 days of service of the order of suspension, the carrier may file and serve on all parties an answer to the order of suspension. No objections or affirmative defenses not plainly raised in the answer may be raised subsequently in the proceeding, except if based on grounds of newly discovered evidence or supervening events. Late filing of an answer shall be permitted only for good cause shown.

(b) *Failure to file an answer.* In case of the carrier's failure to file and serve an answer to the order within the time and in the manner prescribed, the right to all further procedural steps before final decision, including hearing, briefs, and recommended and tentative decisions, shall be deemed waived, and the Department will proceed immediately to disposition of the case.

§ 302.1014 Motions.

(a) *Motions for termination of suspension and/or proceeding.* (1) The charter air carrier may at any time file and serve on all parties to the proceeding, a motion addressed to the Department asking that the suspension be lifted, on the ground (i) that suspension, pending completion of the proceeding, is not required in the interest of the rights, welfare or safety of the public; or (ii) that the carrier has come into compliance with the provision or provisions with which it had failed to comply. Such motions may be combined with a motion to terminate the proceeding. Such motions shall be made in lieu of petitions for reconsideration of the Department's initial order, or of motions to dismiss.

(2) Motions made pursuant to paragraph (a)(1) of this section will be submitted to the DOT decisionmaker for determination. The DOT decisionmaker may grant motions for termination of suspension in proper cases without waiting for expiration of the time for answers but parties may submit informal written or telegraphic statements of position on such motions which will be considered if received prior to DOT action. Such communications need not be served separately but shall be copied in full in a timely answer filed and served pursuant to the provisions of this part.

(b) *Motions directed to pleadings.* No motion for more definite statement shall be made but the substance thereof may be stated in the answer. The administrative law judge may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) *Motions for extension of time.* Substantial extensions of procedural dates shall be granted only when required in the interest of justice, unless the respondent air carrier stipulates that it will refrain from operating the suspended service until the Department's adjudication on the merits of the proceedings becomes final even though the Department has exhausted its emergency suspension power. The filing of motions for extension shall not operate to excuse failure of timely compliance with any procedural requirement.

(d) *Other motions.* The provisions of § 302.18 shall govern the above mentioned motions in respects not provided for in this section, and shall govern any other motions, except that answers to written motions shall be filed and served within 5 days of service of such motions.

§ 302.1015 Additional suspension.

Pending the completion of proceedings hereunder, the Department, upon motion or its own initiative, may further extend the period of suspension of the charter carrier's operating authority for an additional period or periods aggregating not more than 60 days.

§ 302.1016 Expedited hearing.

The administrative law judge shall set the date of hearing not later than 15 days after the issuance of the DOT decisionmaker's suspension order. He or she may postpone the date of the hearing, or grant continuations of the hearing, only to the extent necessary in the interest of justice. The administrative law judge shall urgently expedite the proceeding and shall fix all procedural dates on the basis of maximum acceleration consistent with justice. Proposed findings and conclusions and supporting reasons shall be stated orally on the record. The delegation of § 302.27(a) shall not be applicable and the administrative law judge shall, upon termination of the hearing, make his or her initial decision orally on the record. Requests for a written initial decision may be granted on the same condition as substantial extensions of procedural dates (§ 302.1014(c)).

§ 302.1017 Final decision.

The parties may appeal from the initial decision by filing with the Department and serving upon all other parties a notice of appeal within two days after the rendering of the initial decision if it is made orally, or the service of a written initial decision, as the case may be. No exceptions shall be filed but within 10 days of the notice of appeal each party may file one brief (§ 302.31(c)) with the Department. The DOT decisionmaker will give three days' notice of oral argument, where granted. If no notice of appeal is filed, or if no brief is filed by the party or parties having filed a notice of appeal, within the times herein provided, the initial decision shall without further proceedings become the final decision of the Department five days after expiration of the time for filing notice of appeal or brief, as the case may be unless the DOT decisionmaker has issued an order to review upon his or her own initiative.

Subparts K–N—[Reserved]

Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation

§ 302.1501 Applicability.

This subpart sets forth the rules applicable to certain contractual arrangements between the Postal Service and certificated air carriers for the transportation of mail by air entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772. Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than 5 percent, based on weight, of the international mail transported under any such contract may consist of letter mail. Any such contract is required by the statute to be filed with the Department not later than 90 days before its effective date, and unless the Department disapproves the contract not later than 10 days prior to its effective date, the contract automatically becomes effective.

§ 302.1502 Filing.

Any air carrier which is a party to a contract to which this subpart is applicable shall file eight copies of the contract in the Documentary Services Division, Department of Transportation, Washington, D.C. 20590, not later than 90 days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.1504 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the Secretary or other duly authorized officer of the filing carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.1503 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent:

(a) Estimates of the costs of performing the contract, and an explanation of the basis for the estimates which clearly sets forth the methodology involved in the assignment of direct and all allocated costs and the investment related thereto (including, where available and relevant, data as to costs of performing past contracts for the transportation of mail by air);

(b) Estimates of the effect of the contract upon such carrier's revenues, and an explanation of the basis for the estimates (including, where available and relevant, data as to effects upon revenues resulting from past contracts for the transportation of mail by air); and

(c) Estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.1504 Service.

A copy of each contract filed pursuant to § 302.1502, and a copy of all material and data filed pursuant to § 302.1503, shall be served upon each of the following persons:

(a) Each certified route air carrier, other than the contracting carrier, which is authorized to carry mail between any pair of points between which mail is to be transported pursuant to the contract;

(b) Each commuter air carrier (as defined in § 298.2 of this chapter) which serves between any pair of points between which mail is to be transported pursuant to the contract; and

(c) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, D.C. 20260-1124.

§ 302.1505 Complaints.

Within 15 days of the filing of a contract, any interested person may file with the Department a complaint against the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.1504.

§ 302.1506 Answers to complaints.

Answers to the complaint may be filed within 10 days of the filing of the complaint, with service being made as provided in § 302.1505.

§ 302.1507 Further procedures.

(a) In any case where a complaint is filed, the Department shall issue either an order dismissing the complaint, or an order disapproving the contract, or such other order as may be appropriate. Any such order shall be issued not later than 10 days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the Department may issue an order directing the parties to the contract to show cause why the contract should not be disapproved, or such other order as may be appropriate. Unless otherwise specified by the Department, written answer to the order and supporting document shall be filed within 10 days of the date of service of the order to show cause. A final order containing the Department's determination as to whether the contract should be disapproved, shall be issued not later than 10 days prior to the effective date of the contract.

§ 302.1508 Petitions for reconsideration.

Except in the case of a Board determination to disapprove a contract, no petitions for reconsideration of any DOT determination pursuant to this subpart shall be entertained.

Subpart P—[Reserved]

Subpart Q—Expedited Procedures for Processing Licensing Cases

§ 302.1701 Applicability.

This subpart sets forth the rules applicable to proceedings on:

(a) Applications for certificates of public convenience and necessity and renewals, amendments, modifications, suspensions and transfers of certificates under sections 401(d)(1), 401(d)(2), 401(d)(3), 401(g), and 401(h) of the Act;

(b) Applications under section 401(e)(7)(B) of the Act for the removal or modification of a term, condition, or limitation attached to a certificate; and

(c) Applications for foreign air carrier permits, and renewals, alterations, amendments, modifications, suspensions, and transfers of such permits under sections 402(c) and 402(f) of the Act.

§ 302.1702 Subpart A governs.

Except as modified by this subpart, the provisions of Subpart A of this part continue to apply.

§ 302.1703 Filing of applications.

Any person may file an application of the type described in § 302.1701. Applications for foreign air carrier permits shall be filed as specified in § 211.2 of this chapter. The Department will publish in the FEDERAL REGISTER a weekly list of applications filed under this subpart.

§ 302.1704 Contents of applications.

(a) Applications under this subpart (including applications filed under § 302.1720(c) or conforming applications filed under § 302.1720(e) or § 302.1730(c)) shall indicate on the cover page how the applicant proposes that its application be processed (See § 302.1750). Certificate applications shall contain the information required by Part 201 of this chapter and foreign air carrier permit applications shall contain the information required by Part 211 of this chapter. Applications shall also include:

(1) A statement of economic data and other matters that the applicant desires the Department to notice officially;

(2) Written evidence establishing the facts that the applicant relies on to establish its fitness and to show that the grant of the relief requested is consistent with or required by the public convenience and necessity, or is in the public interest, as applicable; and

(3) The applicant's opening argument.

(b) Each application shall be accompanied by an Environmental Evaluation in conformity with Parts 312 and 313 of this chapter unless a waiver or exemption has been granted under § 312.6.

(c) Later filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) Applications shall include a list of the names and addresses of all persons that have been served.

§ 302.1705 Service of documents.

(a) *General requirements.* (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and supporting documents. The notice must clearly state the authority sought and the due date for other pleadings. Persons shall file responsive pleadings in accordance with paragraph (b).

(2) After the order establishing further procedures under § 301.1750 has been issued, persons need only serve documents on those listed in the service list accompanying the order.

(3) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a) of this section on all persons served by the original applicant.

(b) *Persons to be served*—(1) *U.S. air carriers.* (i) In certificate proceedings described in § 302.1701 (a) and (b) (except for those proceedings under section 401(d)(3) of the Act):

(A) applicants for certificates to engage in interstate or overseas air transportation, and other persons, shall serve:

(*1*) The airport authority of each airport that the applicant proposes to serve, and

(*2*) Any other person who has filed a pleading in the docket.

(B) applicants for certificates to engage in foreign air transportation or other persons shall serve:

(*1*) All U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the "Official Airline Guide" or in the "Air Cargo Guide,"

(*2*) The airport authority of each U.S. airport that the applicant proposes to serve, and

(*3*) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings under section 401(d)(3) of the Act, applicants and other persons are not required to serve any person, except as the DOT may direct.

(2) *Foreign air carriers.* (i) In foreign air carrier permit proceedings described in § 302.1701(c) (except for those proceedings involving charter-only authority), applicants and other persons shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the "Official Airline Guide" or the "Air Cargo Guide,"

(B) The U.S. Departments of State, and

(C) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority, applicants shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) *Additional service.* The Department may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible.

§ 302.1706 Computation of time.

All time periods prescribed in this subpart are stated in terms of calendar days. Intermediate Saturdays, Sundays and holidays shall be included in the computation. In all other respects, § 302.16 applies.

§ 302.1707 Verification.

The facts asserted in any pleading filed under this subpart shall be attested to by persons having knowledge of them and this attestation shall be stated in an affidavit in support of the pleading. Such persons shall be those who will appear as witnesses to substantiate the facts asserted if an oral hearing becomes necessary.

§ 302.1708 Joint pleadings.

Parties having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.1709 Definition of parties.

Notwithstanding the provisions of §§ 302.14 and 302.15, any person may participate in proceedings under this subpart. Petitions for leave to intervene are not required. Any person may become a party by filing a pleading in the docket before the issuance of the order establishing further procedures.

§ 302.1710 Economic data and other facts.

Whenever economic data and other facts are provided, such information shall include enough detail so that final results can be obtained, without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.1711 Continuances and extensions of time.

The procedures described in § 302.17 will apply to proceedings under this subpart. The filing deadlines in certificate proceedings will be strictly enforced and extensions will be granted only in extraordinary circumstances. Extensions in foreign air carrier permit cases will be granted for good cause shown.

§ 302.1712 Oral presentation; initial or recommended decision.

(a) *Cases to be decided on written submissions.* Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required.

(b) *Petitions for oral presentation or judge's decision.* Any party may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.1770 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs, including an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision; and

(3) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(c) *Time for filing petitions.* Petitions for an oral hearing, oral argument, or a judge's decision shall be filed as soon as practicable, but in no event later than:

(1) 52 Days after the filing of the original application in proceedings governed by § 302.1720;

(2) 35 Days after the filing of the original application in proceedings governed by § 302.1730; and

(3) 14 Days after the due date for answers in proceedings governed by § 302.1740.

(d) *Stipulations.* Where a stipulation of disputed facts would eliminate the need for an oral presentation or judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.1713 Preliminary procedures for rejection or deferral of nonconforming applications.

Within 21 days after the filing of any application under this subpart (including an application which is sought to be consolidated or a conforming application), the DOT decisionmaker may, on behalf of the Department, (a) reject any application that does not comply with this subpart, or (b) defer further processing of the application until information necessary to process the application is submitted. Applications will not be processed, and the time periods contained in this subpart shall not begin to run, until the application is complete. In addition, the DOT decisionmaker may, on behalf of the Department, defer action on a foreign air carrier permit application for foreign policy reasons. Petitions for review of the staff action taken under this section may be filed in accordance with Subpart C of Part 385 of this chapter.

§ 302.1720 Procedures in certificate cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(a).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person that wishes to support or oppose the application must file an answer indicating briefly that person's position, and serve that answer on all persons served with the application. The notice shall also state the due date for answers.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application filed under § 302.1701(a). Requests to modify the issues to be decided and to consolidate applications filed in other dockets, shall be filed as a "motion to modify scope." Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within 28 days after the original application is filed.

(d) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Answers to the original application shall be filed within 28 days after the filing of the original application. Answers to applications filed in accordance with paragraph (c) of this section shall be filed within 42 days after the filing of the original application.

(e) *Answers to motions to modify scope.* Any person may file an answer to a motion to modify scope within 42 days after the filing of the original application. Answers shall set forth the basis for the support of or opposition to the motion, including any economic data or other facts relied on. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and include the information prescribed in § 302.1704. Answers and applications shall not, however, propose the consideration of additional markets.

(f) *Order establishing further procedures.* Within 90 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1730 Procedures in restriction removal cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(b).

(b) *Applications.* Each application to which this section applies shall be limited to a single city-pair market or a single restriction unless a waiver of this requirement has first been obtained under § 302.1790. All restriction removal applications (including conforming applications under paragraph (c) of this section) shall include a notice on the cover page that any person wishing to support or oppose the application must file an answer briefly describing its position, and serve a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Any application that does not conform with this paragraph will be rejected unless a waiver has been granted before the application is filed.

(c) *Conforming applications.* The issues in any proceeding under this section will be limited to those raised in the original application. Motions to modify the scope of the proceeding will not be entertained. Any person may file an application conforming to the scope of the proceeding within 14 days after the filing of the original application. Conforming applications are automatically consolidated. Nonconforming applications will be rejected under § 302.1713.

(d) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers to the original application shall be filed within 14 days after the filing of that application. Answers to conforming applications shall be filed within 28 days after the filing of the original application.

(e) *Order establishing further procedures.* Within 60 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1740 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to the foreign air carrier permit cases described in § 302.1701(c).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Time limits shall be calculated from the date of filing with the Documentary Services Division. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 28 days after the filing of the application and shall include any economic data, other facts, and argument upon which the person relies to support its position.

(d) *Executive departments.* The views of the Department of State and the Federal Aviation Administration's evaluation of the applicant's operational fitness shall be filed not later than the due date for answers to applications.

(e) *Order establishing further procedures.* As soon as possible after the date that answers are due, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1750 Disposition of applications—orders establishing further procedures.

(a) *General requirements.* Within the time limits established in § 302.1720(f), § 302.1730(e), or § 302.1740(e), as applicable, the DOT decisionmaker will issue an order establishing further procedures in each case. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. With respect to all or any portion of each application, the DOT decisionmaker will take one of the following actions:

(1) Set the application for oral evidentiary hearing. In this event, all of the procedures set forth in §§ 302.1751 through 302.1755 will apply unless the DOT decisionmakers decides otherwise. The DOT decisionmaker may limit the scope of the issues to be decided in an oral evidentiary hearing. In that event, the procedures set forth in §§ 302.1751 through 302.1755 will apply to the oral evidentiary hearing phase of the case, and the DOT decisionmaker will indicate what procedures will be employed in deciding the other issues in the case.

(2) Dismiss the application. This action constitutes a final DOT order subject to judicial review. Petitions for reconsideration of such an order will be entertained. This option will not be used in restriction removal cases under § 302.1730.

(3) Announce that the Department has begun to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker will indicate which, if any, of the procedural steps set forth in §§ 302.1752 through 302.1756 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(4) Announce that the Department will decide the case by show cause procedures or issue an Order to Show Cause why the application should not be granted.

(b) *Additional evidence.* The order establishing further procedures may provide for the filing of additional evidence.

(c) *Petitions for reconsideration of an order establishing further procedures.* Petitions for reconsideration of an order establishing further procedures will not be entertained except to the extent that the order dismissed all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in § 302.1757 will be calculated from the date of the order reinstating the application.

§ 302.1751 Oral evidentiary hearing.

If the Department determines under § 302.1750(a) that an oral evidentiary hearing should be held, the application or applications will be set promptly for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures.

§ 302.1752 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) 14 days after the close of the oral evidentiary hearing established under § 302.1750(a)(1), unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) 14 days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the Department determines that some other period should be allowed.

§ 302.1753 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.1750(a)(1), the administrative law judge shall adopt and serve an initial or recommended decision within 136 days after the issuance of the order establishing further procedures unless:

(1) The Department, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than 30 days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.1750(a)(1), the administrative law judge shall issue an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge 14 days after it is served. Unless exceptions are filed under § 302.1754 or the DOT decisionmaker issues an order to review on its own initiative, an initial decision shall become effective as the final order of DOT the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.27 shall be applicable.

§ 302.1754 Exceptions to administrative law judge's initial or recommended decision.

(a) *Time for filing.* Within 7 days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the Department.

(b) *Form and content of exception.* Exceptions shall comply with § 302.30(b).

(c) *Effect of failure to file timely and adequate exceptions.* The provisions of § 302.30(c) shall apply.

(d) *Review is automatic.* If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

§ 302.1755 Briefs.

The provisions of § 302.31 shall apply, except that:

(a) In a case in which an initial or recommended decision has been served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within 14 days after service of the initial or recommended decision.

(b) In a case in which an initial or recommended decision has been issued and no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review on his or her own initiative and specifically provided for the filing of briefs to the DOT decisionmaker.

(c) In a case in which an initial or recommended decision will not be issued, briefs to the DOT decisionmaker may be filed only if specifically provided for in the order establishing further procedures, and only upon the issues specified in that order. Such briefs may be filed by any party within 21 days after the service date of the order establishing further procedures, unless that order established a different due date.

§ 302.1756 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.32(b) shall also apply.

§ 302.1757 Final decision of the Department.

In addition to the provisions of § 302.36, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.1750(a)(1), DOT will issue its final order within 90 days after the initial or recommended decision is issued. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President under section 801 of the Act.

(c) In the case of a certificate application that has been processed under § 302.1750(a)(3) or (4), the Department will issue its final order within 180 days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

§ 302.1758 Petitions for reconsideration.

The provisions of § 302.37 shall apply to petitions for reconsideration.

§ 302.1760 Internal procedures.

(a) In deciding which of the procedures set forth in § 302.1750 will be used for each case under this subpart, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Operations. That recommendation will be coordinated with the General Counsel and the Chief Administrative Law Judge, or their designees. If there is disagreement in that group, separate recommendations will be promptly submitted to the extent necessary to reflect their views.

(b) In deciding each case under this subpart on the merits, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Operations, and the Assistant General Counsel for International Law. If there is disagreement among these employees, separate recommendations will be promptly submitted to the extent necessary to reflect those views.

§ 302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.

The Department will assign applications made under §§ 302.1701, 302.1720 (c) and (e), 302.1730(c) and 302.1740 for consideration under the expedited procedures of this subpart and order the record presented directly to the DOT decisionmaker for final decision unless it determines that:

(a) Use of expedited procedures will prejudice a party;

(b) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(c) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

§ 302.1780 Standards for deciding cases in which expedited, simplified procedures are employed.

The standards employed in deciding cases under § 302.1750(a)(3) or (4) shall be the same as the standards applied in cases decided under § 302.1750(a)(1). These are the standards set forth in the Federal Aviation Act of 1958, as amended, as interpreted and expanded upon under the Act.

§ 302.1790 Waivers.

Upon the filing of a motion, the DOT decisionmaker or the Assistant General Counsel for International Law, as appropriate, may, on behalf of the Department, grant such waivers from the terms and limitations contained in this subpart as it shall find to be consistent with the public interest and the proper dispatch of DOT's business. Petitions for review of the staff action taken under this section may be filed in accordance with Subpart C of Part 385 of this chapter.

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Subpart A—General Provision

§ 303.01 Purpose.

These regulations set forth the procedures by which applications may be made to the Department of Transportation under sections 408, 409, 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1378, 1379, 1382 and 1384) and procedures governing proceedings to enforce these provisions. These regulations also grant exemptions from sections 408 and 409 for certain types of transactions.

§ 303.02 Definitions.

(a) The term "Act" refers to the Federal Aviation Act of 1958, as amended. (49 U.S.C. 1301 *et seq.*)

(b) The term "Assistant Secretary" means the Assistant Secretary for Policy and International Affairs, or as delegated. As provided in 49 CFR 1.43, the Secretary or Deputy Secretary may exercise any authority in lieu of the Assistant Secretary under the provisions of this part.

(c) The term "documents" means (1) all written, recorded, transcribed or graphic matter including letters, telegrams, memoranda, reports, studies, forecasts, lists, directives, tabulations, logs, or minutes and records of meetings, conferences, telephone or other conversations or communications; and (2) all information contained in data processing equipment or materials. The term does not include daily or weekly statistical reports in whose place an annual or monthly summary is submitted.

(d) The term "Documentary Services Division" means the Documentary Services Division of the Office of the Assistant General Counsel for Regulation and Enforcement.

(e) The term "hearing" means either a show cause proceeding as provided in § 303.44 of this part or a full evidentiary hearing as provided in § 303.45 of this part, whichever is determined by the Assistant Secretary to be appropriate.

(f) The term "Section 408 transaction" means any transaction or relationship made unlawful by section 408(a) of the Act if not approved under section 408(b) of the Act. (49 U.S.C. 1378 (a) and (b))

(g) The term "Section 409 transaction" means any transaction or relationship made unlawful by section 409 of the Act if not approved under that section. (49 U.S.C. 1379).

(h) The term "Section 412 transaction" means any contract, agreement or discussion of a cooperative working arrangement within the scope of section 412 of the Act. (49 U.S.C. 1382).

(i) The term "standard labor protection provisions" means the labor protection provisions imposed by the Civil Aeronautics Board in the *Pan-American—Acquisition of Control of and Merger with National Case*, CAB Order 79-12-163/164/165 (Oct. 24, 1979).

§ 303.03 Requirement to file application.

A person who seeks approval of a Section 408, 409 or 412 transaction must file with the Documentary Services Division and application that conforms to the requirements set forth in §§ 303.04 and 303.05 of this part.

§ 303.04 General rules governing application content, procedure and conditions of approval.

(a) Unless specifically exempted by these regulations or by an order of the Assistant Secretary, a person filing an application pursuant to § 303.03 of this part shall prepare and file the application in the manner specified in this section. The application shall also contain the information required by the subpart of this part applicable to the type of transaction for which approval is requested. The subparts applicable to each type of transaction are as follows:

(1) Section 408 transactions: Subpart B;

(2) Section 409 transactions: Subpart C; and

(3) Section 412 transactions: Subpart D.

An application may be deemed incomplete if it is not in substantial compliance with these requirements.

(b) The parties to the transaction may file either separate applications or one joint application so long as all the information required herein is submitted for each party to the transaction; except, in the case of non-consensual Section 408 transactions, the applicant shall be required to provide the information required herein for its target company only to the extent that such information is available to it. The Assistant Secretary or Administrative Law Judge, if the matter has been assigned to a Judge, upon his or her initiative or upon application, may order the target company or other persons to submit some or all of the information required by this subpart, or other information under 14 CFR 302.19.

(c) The application shall be indexed to correspond to the individual subsections of the applicable subpart. Each page of the application and each document submitted with the application shall be marked with the name, initials, or some other identifying symbol of the applicant. The application shall also indicate the date of preparation and the name and corporate position of the preparer. In addition, for Section 408 applications, the intended recipient of each document submitted must be identified.

(d) Where the required information is in data processing equipment, on microfilm, or is otherwise not eye-readable, the applicant shall provide such information in eye-readable form.

(e) The information provided by the applicant shall be updated in a timely fashion throughout the period of consideration of the application.

(f) If any information or documents required by the applicable subpart are not available, the applicants shall file an affidavit executed by the individual responsible for the search explaining why they cannot be produced.

(g) The Assistant Secretary or the Administrative Law Judge may order any applicant to submit information in addition to that required by the applicable subpart.

(h) An applicant may withhold a document required by this part on the grounds that it is privileged, but each document so withheld shall be identified and the applicant shall supply a brief description of the nature of the document, a written statement indicating the basis of the privilege claimed, and the names of the preparers and recipients of the document. If any interested party contests the assertion of privilege, the document shall be promptly submitted to the Assistant Secretary, or the Administrative Law Judge, if the matter has been assigned to a Judge. Where appropriate, an in camera inspection may be ordered.

(i) The person submitting the application to the Department shall send a complete copy of the application to the Chief, Transportation Section, Antitrust Division of the Department of Justice, at the same time as it is filed with the Documentary Services Division.

(j) The applicant shall, if requested, be responsible for expeditiously providing the application to any interested person, whether or not a party.

(k) Unless otherwise specified in this subpart, all applications shall conform generally to the requirements set forth in 14 CFR Part 302, Subpart A.

(l) In exceptional circumstances, the Assistant Secretary may waive or alter the procedural requirements of this part to permit a transaction to proceed on an expedited basis.

§ 303.05 Applications requesting antitrust immunity.

(a) Each application must state explicitly whether or not the applicant seeks antitrust immunity under the provisions of section 414 of the Act. If antitrust immunity is requested, the application should specify whether the applicant seeks full immunity or immunity only from the provisions of sections 4, 4a and 4c of the Clayton Act, 15 U.S.C. 15, 15a, 15c. Each application seeking antitrust immunity shall contain a statement explaining why the applicant believes immunity is in the public interest and necessary in order for the transaction to proceed.

(b) Any application for antitrust immunity filed in connection with an application under section 412 (relating to interstate and overseas air transportation) shall specify the duration of such requested immunity, but in no event shall it extend beyond January 1, 1989.

(c) Any material misrepresentation of fact in such an application shall be grounds for rescission *nunc pro tunc* of any antitrust immunity granted as a result of the misrepresentation.

(d) A request for renewal of any immunity granted does not operate under section 558 of Administrative Procedure Act, 5 U.S.C. 558(c), to extend the period of immunity conferred.

§ 303.06 Review of antitrust immunity.

The Assistant Secretary may initiate a proceeding to review any antitrust immunity previously conferred by the CAB or the Department in any Section 408, 409 or 412 transaction. The Assistant Secretary may terminate or modify such immunity if the Assistant Secretary finds after notice and hearing that the previously conferred immunity is not consistent with the provisions of section 414. In any proceeding to review such immunity the proponents of the immunity will have the burden of justifying the continuation of previously conferred immunity under the provisions of section 414.

§303.07 Transitional rule.

If a Section 408, 409, or 412 application or a request for antitrust immunity under section 414 is pending on the date this part is amended, such application or request shall be deemed made pursuant to the provisons of this part, as amended.

Subpart B—Section 408 Applications

§ 303.10 General provisions concerning contents of applications.

A Section 408 Application shall contain the following general information:

(a) The names and mailing addresses of the parties to the transaction and the names, titles, and duties of the officers and directors of each corporation.

(b) A description of the transaction, including the exchange ratio, the terms of any tender offer, and the form of financing.

(c) A copy of the final or most recent draft agreement between the parties relating to the transaction.

(d) The percentage of the outstanding voting securities of either corporation that is owned or controlled by the other corporation or by the other corporation's officers or directors. The application shall also set forth the consideration paid for these securities, the date and method of their purchase, and the form of payment.

(e) A list of all officers and directorships held in any other corporation which is a common carrier or is substantially engaged in the business of aeronautics by officers or directors of any party to the transaction.

(f) A list of all other financial relationships between the parties to the transaction, or between their officers, directors or major shareholders.

(g) All studies, reports and analyses regarding the proposed transaction or the other party to the transaction made by or for an applicant within three years preceding the application. These materials shall include, but not be limited to, any discussion of the proposed transaction or other party to the proposed transaction with respect to—

(1) Competition, markets, market shares, actual competitors or potential entrants;

(2) Potential for sales growth or expansion into new markets;

(3) Efficiencies or costs of the proposed transaction; or

(4) The financial condition or operating strengths or weaknesses of the proposed partner or target company.

(h) If the applicant is relying for approval of the proposed transaction on a claim that that transaction would meet significant transportation needs of the public and that these needs may not be satisfied by a reasonably available alternative having materially less anticompetitive effects, all studies, reports and analyses made within two years preceding the filing of the application regarding other possible mergers, consolidations, or acquisitions that it had considered.

(i) Any other evidence that applicants wish the Department to consider in addition to that required by this subpart shall also be filed with the application. This evidence shall include all exhibits, data, and testimony on which the applicant intends to base its direct case and the names and addresses of all witnesses whom it will seek to call in the event that an oral evidentiary hearing is held. An applicant is not precluded from later filing answers, replies, or rebuttal exhibits or testimony.

§ 303.11 Financial information.

A Section 408 application shall contain the following financial information:

(a) The following reports filed with the U.S. Securities and Exhange Commission within three years prior to the date of the application:

(1) All reports filed on Form 10K;

(2) All registration statements and all reports filed on Forms 10Q and 8K;

(3) All proxy statements; and

(4) All Schedules 14 D-1 with all amendments.

(b) Annual reports to shareholders for the three years preceding the application.

§ 303.12 Equipment and facilities information.

A Section 408 application shall include the following equipment information:

(a) A list of aircraft owned or leased by the applicant by aircraft type and age.

(b) If the aircraft is leased from others, the owner of the aircraft and the terms of the lease; if the applicant leases aircraft to others, the lessee and the terms of the lease.

(c) A detailed description of all plans and orders for the acquistion, lease or major modifications of flight equipment, including the price and projected delivery date of any aircraft.

(d) A detailed description of all plans and agreements for the sale or lease of aircraft.

(e) A list and description of airport terminal and landing facilities, including terms of tenure.

§ 303.13 Competitive information.

A Section 408 application shall contain the following competitive information:

(a) Separate lists of all non-stop city-pairs (1) that are served by the applicant, (2) that are served by the other party to the proposed transaction, and (3) into which the applicant or the other party to the proposed transaction is considering entry, at the time of the application.

(b) All studies, reports, and analyses that were submitted to the applicant's chief executive, financial, marketing, or operating officers, its Board of Directors, its executive committee, or any financial institution, within two years prior to the filing of the application, that discuss route development, internal expansion, service expansion or the marketing plans or strategies of the applicant.

(c) All documents prepared by or for the company within two years prior to the filing of the application that discuss any of the following subjects in relation to any area served by both parties (whether the area discussed in the document is one or more cities, airports, city-pairs, routes, hubs, regions, states, tiers, service to foreign points or any other geographical area):

(1) Competition;

(2) The possibility of new entry;

(3) Profitability or yield;

(4) Fare levels or availability of discount fares;

(5) Capacity or scheduling;

(6) Load factors or break-even levels;

(7) Identity of potential entrants; or

(8) Possible responses to new entry or to changes in a competitor's fares, scheduling, capacity or number of discount seats offered.

(d) All documents prepared by or for the company within two years prior to the filing of the application that discuss any of the topics listed in § 303.13(c) in relation to any area served by the other party to the proposed transaction (whether the area discussed in the document is one or more cities, airports, city-pairs, routes, hubs, regions, states, tiers, service to foreign points or any other geographical area).

(e) A copy of the company's flight schedule effective at the time of the application.

(f) A copy of the company's tariffs or list of applicable fares as of the time of the application.

§ 303.14 Availability of resources.

A Section 408 application shall contain a detailed description of the following for each airport served by both parties to the proposed transaction:

(a) The availability of fuel and the policy of fuel suppliers as to the supply and price of fuel to new entrants.

(b) The availability of landing slots at any of the airports that have access allocated by the FAA or are otherwise restricted.

(c) The environmental constraints on each airport that limit or regulate additional service, whether of new entrants to the airport or of expanded service by incumbents. The report on environmental constraints shall include a description of any regulation that afects airport use, including but not limited to noise, air, and surface pollution.

(d) Airport constraints as to the size or type of aircraft that can be operated at the airport, including, but not limited to, such considerations as runway length, availability of ramp space, and safety considerations.

(e) Any constraints with respect to terminal facilities, including but not limited to counter or ticketing space, gate space, baggage or cargo consolidation space, and ramp space.

§ 303.15 Potential public benefits of the proposed transaction.

(a) If a Section 408 applicant intends to rely on public benefits to justify approval of its proposed transaction, the applicant shall describe those benefits in detail and include all documents submitted to its chief executive, financial, marketing, or operating officer, its Board of Directors, its executive committee, or any financial institution, that discuss these benefits or the following subjects:

(1) Any decrease in operating costs or increase in operating efficiencies. This should include an estimate of when the savings will be realized;

(2) Service benefits and proposed changes in price/quality options;

(3) Any enhancement of competition and the regions where that enhancement will occur; or

(4) Any changes in employment opportunities.

(b) The applicant shall provide all data, and set forth the method of calculation, upon which its claims of benefits rely.

(c) In describing the public benefits, the applicant shall distinguish between a one-time cost saving or benefit resulting from the transaction and continuing operational efficiencies or benefits.

§ 303.16 Potential impact of the proposed transaction.

A Section 408 application shall include all documents that were submitted to the applicant's chief executive, financial, marketing, or operating officer, its Board of Directors, its executive committee, or any financial institution, that discuss the following in relation to the proposed transaction:

(a) Any lessening of competition as a result of the proposed merger.

(b) Any costs that would result from labor protective provisions that are necessary to complete the transaction.

§ 303.17 Labor relations.

A Section 408 application shall provide the following labor relations information:

(a) Whether the surviving carrier will accept standard labor protective provisions as a condition of approval of the transaction, and the estimated costs of those provisions.

(b) The number of employees, by each class or craft, employed by each party to the transaction, and the number of employees by class or craft in their employ but on furlough. With respect to those employees on furlough, applicants shall indicate the reasons for such furlough and the order of recall (and the basis thereof) of these employees.

(c) Whether any plans exist for the dismissal, displacement, transfer, reduction of flying time or furlough of any employees in any class or craft as a result of operating changes which would flow from the proposed transaction. If so, applicants shall list for each such class or craft the number of employees affected, the type of action (*e.g.*, dismissal, transfer, furlough, etc.) anticipated, and the manner in which the plans would be implemented.

(d) Applicants' position with respect to the survivability of existing collective bargaining agreements when the merger becomes effective.

(e) Copies of the collective bargaining agreements applicants have with the different classes of employees.

§ 303.18 Fuel consumption.

(a) A Section 408 application shall estimate the amount of fuel that would be consumed by—

(1) The consolidated or commonly controlled entities during the next calendar year following approval; and

(2) Each carrier individually during the next calendar year following disapproval.

(b) With both estimates in paragraph (a), the applicant shall include a statement as to the availability of the required fuel.

§ 303.19 Notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Whenever a proposed Section 408 transaction is subject to the premerger notification requirements of Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. 18a, a complete copy of such application shall also be filed with the Attorney General and the Federal Trade Commission pursuant to the requirements of 15 U.S.C. 18a(c)(6) and the regulations promulgated thereunder.

Subpart C—Section 409 Applications

§ 303.20 General provisions concerning contents of applications.

(a) All transactions within the scope of section 409 of the Act are exempted from the requirements of that provision by § 303.53, but are not granted antitrust immunity. Persons seeking approval of a transaction under section 409 for purposes of obtaining antitrust immunity under section 414 of the Act must file an application containing the following information:

(1) The full name, place of residence, and citizenship of the individual applicant;

(2) The name and address of the major business or professional activity of the individual applicant;

(3) A complete description of the interlocking relationship for which approval is sought, as well as a description of any other interlocking relationship involving the individual applicant which has been approved or exempted by the Civil Aeronautics Board or the Department of Transportation. This description shall include the date and manner of the individual applicant's election or appointment to the position or positions which he or she occupies or seeks to occupy, and shall state the name or names of the persons primarily responsible, directly or indirectly, for his or her election or appointment. It shall also include a statement of his or her present or contemplated duties in connection with the interlocking relationship for which approval is sought and the approximate amount of time devoted or expected to be devoted thereto;

(4) The name of the person or persons, if any, whom the individual applicant represents or will represent on the board of directors of each air carrier applicant, together with a statement as to any financial interest held by such person or persons in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics other than as an air carrier, or person whose principal business, in purpose or in fact, is the holding of stock in, or control of any other person substantially engaged in the business of aeronautics;

(5) The name and address of each business (including but not limited to corporations, partnerships, trusts, etc.) of which the individual applicant is an officer, director, partner, trustee, receiver, manager, attorney, agent, or controlling stockholder or employee, the general character of each such business and a description of the individual applicant's financial interest therein.

(6) A complete description of any benefit and of the amount of, and basis for, any money or thing of value (i) received by the individual applicant during the last year from each air carrier applicant and from any person with whom the individual applicant has or seeks to have an interlocking relationship, whether for service, reimbursement of expenses or otherwise, and (ii) which the applicant contemplates receiving from any such person during the continuance of the interlocking relationship;

(7) The names and titles of all officers and directors of each air carrier applicant, and of each person with whom the individual applicant has or seeks to have an interlocking relationship;

(8) The names (i) of the largest stockholders, not exceeding 20, who hold one percent or more of the voting capital stock of any air carrier applicant and (ii) of the largest stockholders, not exceeding 20, who hold one percent or more of the voting capital stock of any person with whom an interlocking relationship is sought by such application to be approved, together with the number of shares of each class of stock held by each of

such stockholders and the percentage which such shares bear to the total number of shares of the same class authorized and outstanding. (If all or any part of such shares are held for the account of any person other than the holder, the names of such persons shall be disclosed. If the applicant, after making all reasonable efforts, is unable to obtain disclosure of such information with respect to any of the persons classified under paragraph (a)(8)(ii) of this section, the application shall state specifically the efforts made to obtain such information and the reasons why such efforts were unsuccessful);

(9) A description of the shares of stock or other interests held by each air carrier applicant or for its account in persons other than itself; and

(10) Except in the case of interlocking relationships described in § 303.21, a full description of any professional, financial or other business transactions or arrangements which have been entered into within one year prior to the date of the filing of the application by each air carrier applicant with the individual applicant and by each air carrier applicant or individual applicant with any person with whom the individual applicant has or seeks to have an interlocking relationship, together with a full statement as to any such transactions or arrangements which it is contemplated may be entered into while such interlocking relationship continues.

(b) Each application shall state fully such further facts as the applicants respectively deem desirable in order to show that the public interest will not be adversely affected by the approval of the interlocking relationship.

§ 303.21 Approval of systems of affiliated and subsidiary companies.

(a) In the event that an individual occupies or seeks to occupy an interlocking relationship falling within the purview of section 409(a) of the Act which involves only the holding by him or her of the position of officer or director in two or more companies within the same system of affiliated and subsidiary companies (as defined in paragraph (b) of this section), an application for approval of such relationships need not comply with the requirements of § 303.20(a)(10) but shall comply with all other requirements of that section. Such application shall also include—

(1) Such information as is necessary to disclose the fact that the companies in which the individual applicant occupies or seeks to occupy the interlocking relationships are members of the system of affiliated and subsidiary companies as defined in this section; and

(2) A statement that the individual applicant does not occupy or seek to occupy any interlocking relationship falling within the purview of section 409(a) of the Act other than those within the same system of affiliated and subsidiary companies.

(b) The individual applicant may include in any application made by him or her pursuant to this part a request for an order authorizing him or her to hold generally, in addition to the positions so specifically requested, directorships of offices within the same system of affiliated and subsidiary companies, and it shall not be necessary to file a separate application with respect to each such relationship. Any applicant assuming a directorship or office pursuant to such authorization shall, not later than 15 days after assuming such directorship or office, make or cause to be made a full and complete report thereof to the Assistant Secretary. As used in this part, the term "system of affiliated and subsidiary companies" shall include only a specified company and those companies of which it, directly or indirectly through one or more intermediate companies, owns 50 percent or more of the voting capital stock issued by such companies.

§ 303.22 Uninterrupted tenure; no new applications required.

After the individual applicant has been authorized by the Assistant Secretary to hold a particular position, further application in connection with each successive term will not be required so long as the individual continues in uninterrupted tenure of such position, unless otherwise ordered by the Assistant Secretary.

§ 303.23 Notice of changes in positions.

In the event of the individual applicant's resignation, withdrawal, or failure of reelection or reappointment with respect to any of the positions for which approval has been granted, or in the event of any other material or substantial change therein, the individual and each air carrier applicant shall promptly and not more that 30 days after any such change occurs give notice thereof to the Assistant Secretary, setting forth fully the details of any such change.

§ 303.24 Extent of authorization to hold position.

An order by the Assistant Secretary authorizing an individual applicant to hold the position of director of a company will be construed as sufficient to authorize the individual applicant to serve also as chairman of the board of directors or as a member of chairman of any committee or committees of such board.

Subpart D—Section 412 Applications

§ 303.30 General provisions concerning contents of applications.

A Section 412 application shall contain the following general information:

(a) The name, mailing address and primary line of business of each party to the contract, agreement or request for authority to discuss a possible cooperative working arrangement.

(b) If the contract or agreement for which approval is sought is not evidenced by a resolution of an air carrier association, the application shall contain a copy of the contract or agreement that is certified to be true and complete by each party to the contract of agreement. If the contract or agreement is set forth in an exchange of correspondence, copies of all such correspondence must be submitted and must be certified as true and complete by all parties to the contract or agreement. If the contract or agreement is oral, a memorandum fully describing the agreement must be submitted and must be certified as true and complete by all parties to the contract or agreement. If approval is sought for a request for authority to discuss a possible cooperative working arrangement, the application shall contain a complete description of the possible cooperative working arrangement and all matters to be discussed. The description shall be certified to be true and complete by each party to the proposed discussion.

(c) If the contract, agreement or request for authority to discuss a cooperative working arrangement is evidenced by a resolution or other action of an air carrier association, the application shall contain the resolution or other action and a certification by an authorized employee of the association that the resolution or other action was duly adopted on a certain date. The authorized employee shall also specify in such certification the name of each air carrier that concurred in such resolution or other action and the name of each air carrier member that did not concur. Contracts, agreements and requests for authority to discuss cooperative working arrangements may be filed in this manner only if the Association has complied with 14 CFR Part 263.

§ 303.31 Justification for the application.

A Section 412 application shall explain the nature and purpose of the contract, agreement or request to discuss a cooperative working arrangement and describe how it changes any price, rule or practice existing under a previously-approved application. The application also, consistent with Department of Transportation and CAB precedent, shall contain factual material, documentation and argument in support of the application. Economic analyses, when required, shall include full explanatory details, including data sources and allocation methods. If the applicants intend to rely on public benefits to justify approval they shall describe these benefits, including foreign policy and comity considerations.

§ 303.32 Service of the application.

(a) Except as provided in pargraph (b) of this section, a Section 412 application desiribed in § 303.30(c) of this subpart and any related pleadings shall be served on any person or organization that has previously advised the air carrier association of its desire for service of such agreements. Each application shall contain the names and addresses of all persons served and a notice that any party in interest may within 21 days of the date of the application file comments with the Assistant Secretary in support or opposition to the application.

(b) Service of IATA Traffic Conference agreements and amendments thereto upon any person or organization that previously has advised IATA of its desire for service of agreements may be accomplished by sending a summary notice specifying the filing date; the IATA memorandum number; the particular Conferences involved; the subject matter (*e.g.* cargo/passenger, tariffs/agency matters/ procedures); the proposed effective date(s); the markets or Conference areas affected; the names of the carriers participating in the agreement; the names of all persons served; and a notice that any party in interest may within 21 days of the date of filing of the application file comments with the Assistant Secretary in support of or opposition to the application. A request for a complete copy of the application can be made under the provisions of § 303.04(j).

§ 303.33 Modifications and cancellations.

This subpart also applies to all modifications or cancellations of contracts or agreements or requests for authority to discuss a possible cooperative working arrangement.

Subpart E—Procedures upon Application of Review

§ 303.40 Determination of compliance.

(a) Within 10 days after an application is filed pursuant to § 303.03, the Assistant Secretary will determine whether the application complies with the requirements of §§ 303.04 and 303.05.

(b) If the Assistant Secretary determines that the application is incomplete, he or she may issue a notice dismissing the application without prejudice. If the application is dismissed, and statutory time period for completion of proceedings will not begin to run until a completed application is filed.

§ 303.41 Notice.

(a) The Documentary Service Division shall compile a weekly list of all applications filed under §§ 303.04 and 303.05. The list shall include a description of the application, the docket number, date of filing, state that it may be reviewed in the Documentary Services Division, and indicate that interested parties may comment on the application or request a hearing within 21 days of the date of filling or other period as specified. The weekly list will normally be prepared on the following Monday, or as soon as possible, and will be posted on a public bulletin board in the Documentary Services Division. The list also shall be submitted for publication in the FEDERAL REGISTER.

(b) In appropriate case, particularly when an application concerns a matter of broad public significance, the Assistant Secretary may cause a notice of an application and request for public comment to be published separately in the FEDERAL REGISTER.

§ 303.42 Comments on application.

(a) Unless a different comment period is specified in the weekly list, or in a notice of filing published in the FEDERAL REGISTER, any person may file comments, responses to the application, and/or a request for a hearing within 21 days of the filing of an application.

(b) Comments supporting or opposing an application or proposing conditions and responses thereto shall state with particularity the factual basis on which the person commenting relies, and provide affidavits or other material in support of the factual basis, if appropriate.

(c) Requests for a formal oral evidentiary hearing must set out with specificity the material issues of fact in dispute that cannot be resolved without such a hearing. Vague, unsupported allegations will not suffice.

§ 303.43 Action following the comment period.

(a) *Section 408 applications.* After the period for which comments or requests for a hearing are due, the Assistant Secretary may issue an order to show cause, or an order requesting further information or justification, or an order instituting a full evidentiary hearing, or other further procedural orders.

(b) *Section 409 and 412 applications.* After the period for which comments, requests for a hearing or responses to an order to show cause are due concerning a Section 409 or 412 application, the Assistant Secretary may proceed by order requesting further information or justification or by order of approval or disapproval or, in appropriate causes, may proceed by order to show cause or by order instituting a full evidentiary hearing.

(c) Notice to the public of any full evidentiary hearing or order to show cause concerning an application shall be made by publication in the FEDERAL REGISTER.

§ 303.44 Show cause proceedings.

If the Assistant Secretary determines that an application, or review of a previously granted application, will be considered in a show cause proceeding, a tentative decision shall be issued inviting interested persons to show cause why the tentative decision should not be made final. Interested persons may respond to the order within the time specified in the order. Replies to such responses shall be permitted within the time specified in the order. Persons wishing to introduce additional facts into the record should incorporate such information in their responses or replies by affidavit. In the case of applications, show cause orders may be issued after the receipt of initial comments on the application.

§ 303.45 Evidentiary hearings.

(a) If the Assistant Secretary determines that an application, or review of a previous granted application, should be the subject of a full evidentiary hearing, he or she shall issue an order so stating. The term "full evidentiary hearing" includes any hybrid format set out in the instituting order. This order shall set forth the issues that are to be considered in such hearing.

(b) After the issuance of an order for a full evidentiary hearing, the Chief Administrative Law Judge shall promptly appoint an Administrative Law Judge to conduct such hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556, and the Rules of Practice in Part 302 of this chapter.

(c) The applicants and the Assistant General Counsel for Aviation Enforcement and Proceedings shall be parties in any full evidentiary hearing held under these regulations. The Assistant Attorney General, Antitrust, shall be a party upon notice filed with the Administrative Law Judge. Other persons may intervene as parties as provided by § 302.15 of this chapter.

(d) Within the time specified in the order instituting the full evidentiary hearing, the Administrative Law Judge shall recommend to the Assistant Secretary that the application be approved or denied or that the previously granted exemption approval or immunity should be terminated or continued in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the Administrative Law Judge's findings and conclusions, and the reasons or basis therefore, or all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be served on each party.

(e) Within 10 days after the date the Administrative Law Judge serves his or her recommendation, any party may file written exceptions to the recommendation for consideration by the Assistant Secretary. Within 21 days after the service date of the judge's recommendation, any party may file a brief in support of or in opposition to any exceptions. This period may be altered by order of the Assistant Secretary, who may also authorize the filing of reply briefs.

§ 303.46 Decision by the Assistant Secretary.

The Assistant Secretary shall decide, on the basis of the record and in accordance with the procedures prescribed in Part 302 of this chapter, whether to grant or deny, in whole or in part, the application. A copy of the Assistant Secretary's final decision shall be served on all parties.

Subpart F—Exemptions

§ 303.50 Exemptions.

(a) Each direct air carrier providing air transportation of passengers or property is exempted from section 408(a) of the Act, except that the exemption in this paragraph:

(1) Does not apply to transactions that involve two or more direct air carriers each providing passenger air service, and

(2) Is subject to the notification requirement of § 303.57.

(b) Indirect air carriers, common carriers that are not air carriers, and persons substantially engaged in the business of aeronautics other than as air carriers, are exempted from section 408(a) of the Act for all transactions that do not involve two or more direct air carriers each providing passenger air service.

(c) This exemption does not affect the requirements of 14 CFR Part 204 for transactions involving foreign air carriers or other foreign citizens or affect continuing fitness requirements under that section.

§ 303.51 Exemption for air taxis/small aircraft operators.

(a) *Definition.* "Air taxi operator" means an air carrier that directly engages in the air transportation of persons but that does not operate any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(b) *Exemption.* Parties to a transaction to which section 408 applies only by reason of the involvement of one or more air taxi operators are exempted from the operation of section 408.

§ 303.52 Exemption for aircraft acquisitions.

(a) *Definitions.* For the purposes of this section "Aircraft" means any aircraft, as defined in the Act, together with spare parts and accessories maintained for installation or use on it.

(b) *Exemption.* All persons are hereby exempted from section 408 (a)(2) and (a)(3) of the Act for any transaction that involves only the purchase, lease, or lease with purchase option of aircraft.

§ 303.53 Exemption for interlocking relationships.

Air carriers, other common carriers, persons substantially engaged in the business of aeronautics, and their respective officers, members, stockholders and directors are exempt from the operation of section 409 of the Act.

§ 303.54 Application for exemption for Section 408 transactions.

(a) Any person may file with the Department of Transportation an application for an exemption from the operation of section 408 of the Act.

(b) An application for exemption shall contain the following:

(1) A brief, clear description of the transaction or relationship for which an exemption is sought, including, if relevant, a copy of any agreement memorializing such transaction or relationship;

(2) An identification of the parties involved in the transaction or relationship; and

(3) An explanation of why an exemption is in the public interest, including (i) why it is needed, (ii) why it is appropriate, and (iii) a description of any effects on competition from the transaction or relationship (In providing this description, parties should consider the information required in a Section 408 application, as set forth in §§ 303.10 through 303.19 of this part, and determine whether any portion of that information should be supplied).

(c) A notice of any application for exemption shall be published in the Federal Register, together with notice of any hearing which the Assistant Secretary determines to be appropriate.

(d) Upon request, the complete application shall immediately be made available by the applicant to any interested person. Any person may comment on any application for exemption within fifteen days from the date of filing or such other time as is specified in the FEDERAL REGISTER notice.

(e) The Assistant Secretary shall issue a decision on an exemption petition after any comments have been received, granting the exemption if found to be in the public interest, with conditions if he or she finds certain conditions appropriate, or denying the petition.

(f) If a petition for exemption is denied, approval for the transaction or relationship may be requested as provided in these regulations.

(g) A grant of exemption under this section does not confer any immunity from the antitrust laws, nor does it reflect the enforcement intentions of the Department of Justice under the antitrust laws with respect to the transaction.

§ 303.55 Effects of exemption on antitrust laws.

The exemptions granted under §§ 303.50 through 303.54 only operate to exempt persons from sections 408 and 409 of the Federal Aviation Act. Such exemptions do not constitute orders, within the meaning of section 414 of the Act, and confer no immunity or relief from the "antitrust" laws or any other statute. These exemptions do not relieve any person from the preacquisition notification requirements of the Clayton Act, 15 U.S.C. 18a, which apply to certain transactions involving firms with annual sales or assets of $10 million or more.

§ 303.56 Termination of exemption.

The Assistant Secretary may terminate any exemptions provided under this subpart with respect to any transation the Assistant Secretary determines, after notice and comment, to be inconsistent with the provisions of the Act or the public interest.

§ 303.57 Notification requirement for certain transactions.

(a) The exemption in § 303.50(a) is subject to the following condition:

(1) Notice of any acquisition or other control transaction between (i) a section 401 certificated carrier and a carrier certificated under either section 401 or 418 of the Act, or (ii) a person substantially engaged in the business of aeronautics and a carrier certificated under either section 401 or 418 of the Act, shall be filed with the Department's Assistant General Counsel for Litigation not later than 45 days before the effective date of the transaction. The Department may invoke any of the powers and procedures described in section 408(b)(3) of the Act within 45 days after notice is filed.

PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

Sec.

305.1 Applicability.
305.2 Definition.
305.3-305.4 [Reserved]
305.5 Initiation of investigation.
305.6 Appearance of witnesses.
305.7 Issuance of investigation subpenas.
305.8 [Reserved]
305.9 Rights of witnesses.
305.10 Nonpublic character of proceedings.
305.11 Procedures after investigation.
305.12 Motions to quash or modify an investigation subpena.

AUTHORITY: Secs. 202, 204, 411, 415, 1001, 1002, 1004, 1007, Pub. L. 85-726, as amended; 72 Stat. 742, 743, 770, 771, 788, 792, 796 (49 U.S.C. 1322, 1324, 1381, 1385, 1481, 1482, 1484, 1487; 5 U.S.C. 555, 556).

SOURCE: Doc. No. 82, 50 FR 2421, Jan. 16, 1985, unless otherwise noted.

§ 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the U.S. Government, the District of Columbia, or the several States and their political subdivisions.

§ 305.2 Definition.

For the purpose of, and as used in this part, the term "investigation" means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement action should be instituted with respect to alleged violations of law.

§§ 305.3—305.4 [Reserved]

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys, administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

§ 305.6 Appearance of witnesses.

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.

§ 305.7 Issuance of investigation subpenas.

(a) The Deputy General Counsel, the DOT decisionmaker, the chief administrative law judge or the administrative law judge designated to preside at the reception of evidence, may issue a subpena directing the person named therein to appear before a designated administrative law judge at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Each such subpena shall briefly advise the person required to testify or submit documentary evidence of the purpose and scope of the investigation, and a copy of the order initiating the investigation shall be attached to the subpena.

(b) Witnesses subpenaed to appear shall be paid the fees and mileage prescribed in § 302.21 of the Rules of Practice (14 CFR 302.21). Service of such subpenas shall be made in accordance with the provisions of § 302.8 of the Rules of Practice (14 CFR 302.8).

§ 305.8 [Reserved]

§ 305.9 Rights of witnesses.

Any person required to testify or to submit documentary evidence shall be entitled to procure, on payment of lawfully prescribed costs, a copy of any document produced by such person and of his or her own testimony as stenographically reported. Any person compelled to testify or to produce documentary evidence may be accompanied, represented, and advised by counsel.

§ 305.10 Nonpublic character of proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other DOT personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. Unless DOT determines otherwise, all orders initiating investigations which do not disclose the identity of the particular persons of firms under investigation shall be published in the FEDERAL REGISTER. Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents which shall not be available to the general public. The use of such records in DOT proceedings subject to Part 302 of the Rules of Practice shall be governed by §§ 302.19(g) and 302.39 and by the law of evidence applicable to DOT proceedings.

§ 305.11 Procedures after investigation.

Upon completion of the investigation, where the Deputy General Counsel, determines that no corrective action is warranted, the investigation will be closed, and any documentary evidence obtained in the investigation will be returned to the persons who produced it. Where remedial action is indicated by the investigation, the Deputy General Counsel will proceed pursuant to Subpart B of Part 302 of the Rules of Practice or will take such other action as may be appropriate.

§ 305.12 Motions to quash or modify an investigation subpena.

Any person upon whom an investigation subpena is served may, within seven (7) days after such service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify such subpena with the administrative law judge who issued such subpena, or in the event the administrative law judge is not available, with the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. Such motions shall be made in writing in conformity with Rules 3 and 4 of the Rules of Practice (Part 302 of this subchapter); shall state with particularity the grounds therefor and the relief sought; shall be accompanied by the evidence relied upon and all such factual matter shall be verified in accordance with the provisions of Rule 202 of the aforesaid Rules of Practice. Written memoranda or briefs may be filed with the motions, stating the points and authorities relied upon. No oral argument will be heard on such motions unless the chief administrative law judge, the administrative law judge or the DOT decisionmaker directs otherwise. A subpena will be quashed or modified if the evidence whose production is required is not reasonably relevant to the matter under investigation, or the demand made does not describe with sufficient particularity the information sought, or the subpena is unlawful or unduly burdensome. The filing of a motion to quash or modify an investigation subpena shall stay the return date of such subpena until such motion is granted or denied. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may order that the return date of a subpena which he or she has elected to review be stayed pending DOT action thereon.

PART 310—INSPECTION AND COPYING OF DOT OPINIONS, ORDERS, AND RECORDS

Sec.

310.1 General.
310.2 Records available.
310.3 Exempted records.
Appendix A—Description and Location of Records Generally Available
Appendix B—Types of Records Generally Excluded From Availability

Authority: Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324; 81 Stat. 54; 5 U.S.C. 552.

Source: Doc. No. 82, 50 FR 2423, Jan. 16, 1985, unless otherwise noted.

§ 310.1 General.

The provisions of Part 7 of the regulations of the Office of the Secretary shall apply to the inspection and copying of DOT opinions, orders, and records under this chapter. (49 CFR Part 7)

§ 310.2 Records available.

For the guidance and convenience of the public, a list is attached to this part designated Appendix A, which describes various records which are available for inspection and copying. Records which do not fall within one of the described categories nevertheless may be open to inspection and copying. Conversely a record listed in Appendix A to this part may be withheld from general inspection and copying because all or part of it may be an exempted record. By way of example, records otherwise normally available may be exempted where they consist of docket materials withheld from public disclosure under § 302.39 of the Procedural Regulations in this chapter, certain carrier reports received on a confidential basis, or records relating to exempted personnel and classified matters. Exempted records are described in § 310.3.

§ 310.3 Exempted records.

(a) As used herein, "exempted records" include those records which, pursuant to 5 U.S.C. 552(b) or other applicable law or regulation, are not required to be made available generally for inspection or copying.

(b) Appendix B to this part lists various kinds of records which are "exempted records" and therefore may be excluded from public availability. Appendix B to this part is for the convenience and guidance of the public and is not an exhaustive listing; other records not listed therein may be subject to withholding as "exempted records." Any "exempted record" will be withheld from public disclosure only where it is determined that the release of the record would be inconsistent with the purpose of the exemption.

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

Agreements filed under section 412 of Federal Aviation Act: Copies of, and filings and records in connection therewith.	(To be determined).
Air freight forwarder applications and operating authorizations, and filings in connection therewith.	
Aircraft lease or purchase transactions under Part 299, Economic Regulations: Filings in connection therewith.	
Applications of foreign charter carriers for approval of charter flights, as required by specific DOT or Board Order.	
Blind sector applications: Part 216—Copies of applications and authorizations in connection therewith.	
DOT Manual: Instructions to staff and index thereof.	
Charters: Requests for waivers of DOT or Board regulations.	
Civil penalty compromise records filed under Subpart H of the Department's rules of practice.	

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE—Continued

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

Conferences between DOT or Civil Aeronautics Board and other persons, transcripts of.	
Consumer complaint files, as distinguished from investigation files.	
Contracts of the DOT or Civil Aeronautics Board: Contracts awarded; invitations to bid.	
Correspondence relating to items listed in Appendix A.	
Dockets and related material:	
Agents: File showing agents designated for service under section 1005(b) of Federal Aviation Act.	
Applications sent to the President under section 801 of Federal Aviation Act: Card record of.	
Docket binders: Containing material of record in docketed proceedings, and correspondence in connection therewith.	
Docket indexes: Listing by docket number, the filings in each docket and DOT or Board issuances in same.	
By name of applicant or petitioner, each application, petition, etc. bearing a new docket number.	
By name of city, applications for service to said city and disposition thereof.	
By name of carrier and by docket number, a description of pending applications.	
Documents served by Docket Section: Daily record of.	
Oral arguments: List of, by date order.	
Parties to individual docketed proceedings:	
Lists of, with addresses.	
Foreign aircraft permits: Copies of applications (Form 272), permits, reports of cargo operations (Form 321), and other filings in connection therewith.	
Forms used in dealing with the public:	
Copies of forms.	
List of forms showing number and title.	
Inclusive tours: Tour prospectuses and other documents relating to inclusive tour charters under Part 378.	
International Air Transport Association (IATA) resolutions, minutes, and other IATA material.	
Mail compensation:	
Air carrier claims for mail pay (Forms 398 and 545).	
Carrier payments memoranda (instructions regarding billing).	
Class rate information on Form 548 (local service carriers).	

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE—Continued

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

- Monthly listings of summarized passenger loads by flight stages (Schedule T-5), except subsidy ineligible portion.
- Summary of obligations and disbursements to air carriers (Form 470).
- Mileage records: Official DOT or Board records of mileages.
- Minutes of the DOT or Civil Aeronautics Board: Approved minutes of the Board on matters that are not pending.
- Opinions of the General Counsel
- Orders and Opinions of the DOT or Civil Aeronautics Board:
  - Copies of, including published bound volumes "Civil Aeronautics Board Reports.".
  - Index of, by subject, summarizing action taken.
  - Index-Digest of opinions and precedential orders, and citation file.
  - Weekly summaries of orders.
- Overseas military personnel charter applications and authorizations, and filings in connection therewith.
- Policy Statements of the DOT or Civil Aeronautics Board; and index thereof.
- Postal Service: Contracts for the transportation of mail filed pursuant to 39 U.S.C. 5005.
- Public index.
- Published DOT or Board documents.
- Regulations of the DOT or Civil Aeronautics Board; Table of contents of codified regulations.
- Reports of air carriers and related material:
  - Accounting and reporting directives to supplement the Uniform System of Accounts and Reports.
  - ADP instruction directives to supplement Traffic and Capacity Data Collection ADP Manual.
  - Air carrier Form 41 reports, consisting of various financial and statistical schedules filed at various frequencies by each certificated air carrier under Part 241.
  - Air carrier passenger origin-destination survey reports (Form 2787), domestic only. (Subject to prior staff use. Cost of separation and deletion of confidential international data for account of requestor.).
  - Air taxi operator reports required by various DOT or Board orders.
  - Air taxi operators: Commuter air carrier reports of scheduled services (Form 298-C), except Schedule F-1.
  - Air taxi operators: Registration for exemption under Part 298 (Form 298-A).
  - Air taxi operators: Interests in and operations with large aircraft.
  - Carrier officers and directors reports of ownership of stock and other interests.
  - Extension of credit to political candidates report (Form 183).
  - Extensions of time for report filing.
  - Foreign air carriers reports of civil aircraft charters (Form 217).
  - Insurance certificates and notices:
    - Air freight forwarders certificates of insurance (Form 350).
    - Air taxi operators certificates of insurance (Form 257) and standard endorsements (Form 262).
    - Supplemental air carriers: Certificates of insurance and endorsements (Forms 606, 607 and 608).
    - Notice of cancellation of insurance by insurer (Form 609A).
    - Notice of cancellation of insurance by carrier (Form 609B).
  - International Civil Aviation Organization statistical report (ICAO Form C).
  - Local service carrier summarized passenger loads by flight schedule (Schedule T-5), except subsidy ineligible portions.
  - Magnetic tapes prepared by the DOT or Board from reports filed by air carriers.
  - Manual of ADP instructions for traffic and capacity data collection and related materials.
  - Manuals of air carrier accounts and reporting instructions prescribed by the DOT or Board.
  - Manual of instructions to air carriers for passenger origin-destination survey statistics and related materials.
  - National Air Carrier Association (NACA), commercial charter exchange activity, membership roster and flight data (Form 492).
  - Origin-destination survey of airline passenger traffic, domestic data and outputs.

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE—Continued

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

    - Observations of the Director to air carriers, requesting or transmitting specific information to supplement or amplify reports.
    - Passengers denied confirmed space (Form 251).
    - Passenger origin-destination directives, to supplement Passenger O&D Manual.
    - Public accountants reports.
    - Reports of a miscellaneous nature filed pursuant to DOT or Board order.
    - Unaccommodated passenger reports (Form 250).
    - Waivers of accounting and reporting requirements and record retention.
- Route and service authorizations:
    - (Airport-to-Airport Mileages)
    - Certificates of public convenience and necessity.
    - Foreign air carrier permits.
    - Historic and current records and indexes of points served, airports, dates of service inauguration, service deletions, suspensions and restorations, and DOT or Board actions affecting carrier service authorizations.
- Settlement documentation filed under Rule 215 of the DOT's or Board's rules of practice.
- Statements of authorization for off-route charter trips by foreign air carriers (Part 212): Copies of applications for, filings in connection therewith and copies of authorizations.
- Study group charters: Tour prospectuses and other documents relating to study group charters under Part 373.
- Tariff matters:
    - Agent matters:
        - Alternate agents' affidavits as to disability of principal tariff publishing agent.
        - Corporate tariff agents' designation of issuing officer.
        - Powers of attorney (issued by carriers to tariff publishing agents).
        - Tariff publishing instructions (from carriers to agents).
    - Certifications of tariff publications and requests for copies.
    - Concurrences (issued by carriers to tariff publishing carriers).
    - Correspondence with carriers or agents requesting correction of Part 221 violations in tariffs.
    - Free or reduced-rate transportation:
        - Access to aircraft or free-transportation requests (SF 160).

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE—Continued

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

        - Application for, under § 223.8 of Economic Regulations.
        - Carrier manuals containing instructions, rules, regulations and practices governing issuance and interchange of passes.
        - Reports by carriers of free transportation of technical representatives of aircraft manufacturers (§ 223.2 (c), (d) of Economic Regulations).
    - Postponed Board actions: Notices of, on tariffs filed on 45 days' notice, and not acted upon by Board 15 days prior to effective date, under § 399.36 of Policy Statements.
    - Rejection notices.
    - Special tariff permissions.
    - Tariffs and tariff transmittal letters.
    - Tariff embargo notices.
- Trade agreements filed under Part 225 of Economic Regulations.
    - Waivers from Part 221 of Economic Regulations.
- Trade association manuals.
- Travel group charters: Filings and other documents relating to travel group charter filings under Part 372a (excluding names, addresses and phone numbers of TGC participants).
- Unpublished statistical compilations.
- Votes of Board members: Final votes of Board members in Board proceedings.

APPENDIX B—TYPES OF RECORDS GENERALLY EXCLUDED FROM AVAILABILITY

The following list contains by way of example those records which are "exempted records" under this part. The examples of exempted records are listed according to the applicable subsections of 5 U.S.C. 552(b).

(1) *Documents classified pursuant to Executive Order No. 10501.* Classified minutes and classified exhibits in formal proceedings.

(2) *Personnel rules and practices.* Files pertaining to personnel.

Technical manuals and instructions pertaining to the audit of carrier accounts.

(3) *Material exempted by statute.* Matter which heretofore has been exempted from public disclosure under sections 902(f) and 1104 of the Federal Aviation Act, or by specific order will continue to be exempt. Such matters include carrier audit papers and correspondence relating thereto, and mat-

ters on which DOT has granted a motion for nondisclosure pursuant to § 302.39 of its rules of practice.

(4) *Trade secrets and commercial or financial information.* Past or future matter submitted in confidence but for which no formal request under § 302.39 of the rules of practice has been made and granted will be held in confidence to the extent deemed allowable. This provision refers solely to unpublished materials the disclosure of which would be inconsistent with the intent of the Freedom of Information Act. No assurance of withholding material is implied by this, however, and affected persons should formally request withholding under § 302.39 where they deem it necessary to protect their interests.

Examples of confidential matters under this subsection include: local service carrier passenger loads by flight schedules (Schedule T-5, subsidy ineligible portion); origin-destination survey of airline passenger traffic (international); MAC charter rate information submitted in advance of MAC rate proceedings; financial data (Schedule F-1, Form 98-c); materials related to informal subsidy conferences; air carrier service segment data submitted under Part 241; air carrier or air carrier organization letters, information or views used in developing U.S. positions in international aviation matters; and names, addresses, and phone numbers of TGC participants listed in Travel Group Charter filings under Part 372a.

(5) *Inter/intra-agency memoranda.*

Copies of decisions awaiting Presidential action except as provided in § 399.101 of the DOT 's Policy Statements.

Notation, calendar, and for information memoranda.

Budget, management, program evaluation, records disposal, research planning and program files.

Internal memoranda on the Administrative Conference of the United States.

Staff analyses not published by DOT.

Files regarding requisitions, equipment, and space.

Memoranda regarding interagency committees.

Intergovernmental communications on loan guarantee matters.

Research and legislative reference files of the General Counsel.

Memoranda and studies regarding positions in international aviation matters.

Developmental files, research materials, and workpapers.

(6) *Invasion of personal privacy.* Correspondence and inquiries regarding personnel. Individual personnel files and records.

(7) *Law enforcement investigatory files.* Formal and informal internal investigatory files regarding alleged violations of the Federal Aviation Act or requirements thereunder; and names, addresses, and phone numbers of TGC participants listed in Travel Group Charter filings under Part 372a.

PART 310a—ACCESS TO SYSTEMS OF RECORDS—REGULATIONS AND EXEMPTIONS IMPLEMENTING THE PRIVACY ACT OF 1974

§ 310a.1 General.

The provisions of Part 10 of the regulations of the Office of the Secretary shall apply to the maintenance of an access to systems of records pertaining to individuals. (49 CFR Part 10)

(49 U.S.C. Subtitle I)

[Doc. No. 82, 50 FR 2425, Jan. 16, 1985]

PART 311—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

§ 311.1 General.

The provisions of Part 8 of the regulations of the Office of the Secretary shall apply to the classification and declassification of national security information. (49 CFR Part 8)

(49 U.S.C. Subtitle I)

[Doc. No. 82, 50 FR 2425, Jan. 16, 1985]

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec.
313.1 Purpose, scope, and authority.
313.2 Policy.
313.3 Definitions.
313.4 Major regulatory actions.
313.5 Energy information.
313.6 Energy statements.
313.7 Integration with environmental procedures.

AUTHORITY: Secs. 204, Pub. L. 85-726, as amended, 72 Stat. 743, 49 U.S.C. 1324. Pub. L. 94-163, 89 Stat. 940, 42 U.S.C. 6362(b).

SOURCE: Doc. No. 82, 50 FR 2425, Jan. 16, 1985, unless otherwise noted.

§ 313.1 Purpose, scope, and authority.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., hereinafter "EPCA") authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, section 382 of EPCA requires several transportation regulatory agencies, including DOT, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and where practicable and consistent with the exercise of DOT's authority under other law, to include in any major regulatory action a statement of its probable impact on energy efficiency and energy conservation. Section 382(b) of EPCA directs DOT to define the term "major regulatory action" by rule.

(b) Section 204(a) of the Federal Aviation Act of 1958, as amended (hereinafter "Act"), authorizes DOT to establish such rules, regulations, and procedures as are necessary to the exercise of its functions and are consistent with the purposes of the Act.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of DOT's responsibility under EPCA to include in any major regulatory action taken by DOT a statement of the probable impact on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before DOT, as provided herein.

§ 313.2 Policy.

(a) *General.* It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of EPCA as part of DOT's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 102 of the Federal Aviation Act (49 U.S.C. 1302). To the extent practicable and consistent with DOT's authority under the Act and other law, energy conservation and efficiency are to be weighed in the decisionmaking process just as are DOT's traditional policies and missions.

(b) *Implementation.* Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no final decision made public, shall adhere to § 313.6(a) of this part, provided that the fair, efficient, and timely administration of DOT's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing EPCA, particularly in connection with proposed actions which do not require notice and hearing as a prerequisite to decision under the Act. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross-examination.

§ 313.3 Definitions.

As used in this part: (a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Energy efficiency" means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(c) "Energy statement" is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(d) "EPCA" means the Energy Policy and Conservation Act.

(e) "Major regulatory action" is any decision by the DOT decisionmaker or administrative law judge requiring an energy statement pursuant to § 313.4 of this part.

(f) "NEPA" means the National Environmental Policy Act of 1969.

§ 313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 1002(j) of the Act, temporary suspensions under section 401(j) of the Act, emergency exemptions or temporary exemptions not exceeding 24 months under sections 101(3) or 416(b) of the Act and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT's authority under the Act or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

§ 313.5 Energy information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

(1) The net change in energy consumption;

(2) The net change in energy efficiency; and

(3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7 Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a detailed environmental negative declaration is prepared by a responsible official pursuant to DOT's Procedural Regulations implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this Part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the procedures of DOT's NEPA regulations shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by § 313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of EPCA and this part may be involved in a proceeding is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and vice versa.

PART 314—EMPLOYEE PROTECTION PROGRAM

Subpart A—General

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314.2 Definitions.
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314.4 Information requirements.
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314.10 Beginning of proceeding.
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Subpart C—Major Contractions

314.20 Regular monthly computation.
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314.22 Notice of major contraction.

Authority: Secs. 204, 407, Pub. L. 85-726, as amended, 72 Stat. 743, 766, 49 U.S.C. 1324, 1377; sec. 43, Pub. L. 95-504, 92 Stat. 1750 (49 U.S.C. 1552).

Source: Doc. No. 82, 50 FR 2426, Jan. 16, 1985, unless otherwise noted.

Note: The reporting requirements contained in Part 314 have been approved by the Office of Management and Budget under control number 3024-0053.

Subpart A—General

§ 314.1 Applicability.

Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95-504, establishes an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier. This part sets out procedures for the Department to determine whether a qualifying dislocation has occurred.

§ 314.2 Definitions.

As used in this part:

"Bankruptcy" means an adjudication of bankruptcy under Title 11 of the U.S. Code.

"Carrier" means an air carrier that on October 24, 1978, held a certificate issued under section 401 of the Federal Aviation Act of 1958.

§ 314.3 Conformity with Subpart A of Part 302.

Except where they are inconsistent with this part, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

§ 314.4 Information requirements.

The Department may require any carrier to submit any information that it considers necessary to carry out its functions under this part.

§ 314.5 Major contractions.

A major contraction is a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period, and includes an advance determination of major contraction as set forth in § 314.21. The method by which DOT determines whether a carrier has undergone a major contraction is set forth in Subpart C.

§ 314.6 Qualifying dislocation.

A qualifying dislocation is a bankruptcy or major contraction of a carrier, the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978.

Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.

A proceeding to determine whether a bankruptcy or major contraction is a qualifying dislocation begins either with an application filed with the Department or an investigation on DOT's own initiative. Proceedings that begin with an application are governed by §§ 314.11 through 314.16. DOT-initiated proceedings are governed by §§ 314.14 through 314.16.

§ 314.11 Applications.

(a) *Who may file.* An application may be filed by an employee who has been deprived of employment or adversely affected with respect to compensation, or by a representative of one or more such employees.

(b) *Title and contents.* Applications shall be titled "Application for Determination of Qualifying Dislocation," and shall contain, with respect to at least one employee:

(1) Name and address of the employee;

(2) Number of years employed by carrier as of October 24, 1978;

(3) Name and address of the applicant, if different from paragraph (b)(1);

(4) Name of carrier-employer;

(5) Position held by employee immediately before being deprived of employment or adversely affected with respect to compensation;

(6) Date on which employee was deprived of employment or adversely affected with respect to compensation; and

(7) An explanation of the applicant's basis for claiming that a qualifying dislocation has occurred, including all supporting evidence available to the applicant.

(c) *Service.* The Department will serve a copy of each application on the affected carrier, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

(Approved by the Office of Management and Budget under control number 3024-0053)

§ 314.12 Answers.

Any person may file an answer to an application within 15 days after the application is served.

§ 314.13 Disposition of applications.

(a) After the due date for answers, the Department will dismiss the application or begin an investigation to determine whether a qualifying dislocation has occurred.

(b) The Department will dismiss an application if it does not name an employee who, on October 24, 1978, had been employed by a carrier for at least 4 years.

(c) The Department will dismiss an application if the carrier has neither become bankrupt nor undergone a major contraction.

(d) The Department will dismiss an application even though the carrier has become bankrupt or undergone a major contraction, if it finds that the bankruptcy or major contraction clearly did not have as its major cause the change in regulatory structure provided by the Airline Deregulation Act.

(e) A DOT order dismissing an application will announce the reasons for the dismissal.

§ 314.14 Show-cause order.

When the Department makes a preliminary determination of whether the major cause of the bankruptcy or major contraction was the change in regulatory structure provided by the Airline Deregulation Act of 1978, it will issue an order announcing a tentative decision that a qualifying dislocation has, or has not, occurred. The order will direct all interested persons to show cause why the tentative decision should not be made final, and will allow 30 days for objections to be filed. The Department will publish a summary of the order in the FEDERAL REGISTER and serve a copy of the order on each of the following:

(a) The applicant and the applicant's representative, if any;

(b) The affected carrier;

(c) The collective bargaining representatives of the carrier's employees; and

(d) The Secretary of Labor;

(e) State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

§ 314.15 Oral proceedings.

The Department will provide for an oral evidentiary hearing, with notice published in the FEDERAL REGISTER and served on the persons listed in § 314.14, if there are material issues of decisional fact that cannot otherwise be adequately resolved. The DOT decisionmaker may in his or her discretion hear oral argument before making a final determination.

§ 314.16 Final determination.

The Department will publish in the FEDERAL REGISTER a summary of an order announcing its final determination and, within 3 business days after the determination, serve a copy of the order on the persons listed in § 314.14.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.

(a) The Department will monitor the number of full-time employees of each carrier, including employees deprived of employment because of a strike, as reported monthly by carriers in accordance with Part 241 of this chapter.

(b) The DOT does not require monthly reporting of the number of positions that are vacant as a result of terminations for cause and, except as set forth in paragraph (c)(3) of this section, will not account for those positions in computing major contractions. In the cases set forth in paragraphs (c)(1) and (c)(2) of this section, the DOT presumes that the number of employment positions vacant as a result of terminations for cause is small enough that accounting for them would not change the result.

(c) Each month, with respect to each carrier:

(1) If the carrier's current reported full-time employment level is 92 percent or less of any of the carrier's preceding 12 monthly levels, DOT will find that the carrier has undergone a major contraction.

(2) If the current reported level is 93 percent or more of each of the carrier's preceding 12 monthly levels, the Department will not find that the carrier has undergone a major contraction.

(3) If neither of the conditions described in paragraphs (c)(1) and (c)(2) of this section is present, the Department will ascertain by special report from the carrier, and add to the reported employment levels, the number of positions that were vacant in each of the relevant months as a result of terminations for cause. If the resulting figure for the current month is 92.5 percent or less of the resulting figure for any of the preceding 12 months, the Department will find that the carrier has undergone a major contraction. Otherwise, the Department will not make such a finding.

§ 314.21 Advance determinations.

(a) If circumstances indicate that a major contraction will occur, the Department may make an advance determination of a major contraction without waiting for the regular monthly computation set forth in § 314.20. The Department will consider whether to make an advance determination either on its own initiative or upon receipt of an application from an employee who has been deprived of employment or adversely affected with respect to compensation, or a representative of one or more such employees.

(b) An application under this section shall be titled "Application for Advance Determination of Major Contraction." It shall contain the information set forth in § 314.11 (b)(1) through (b)(6) and an explanation of the applicant's basis for claiming that a major contraction will occur, including all supporting evidence available to the applicant. A person may consolidate an application under this section with an application under § 314.11 for determination of a qualifying dislocation.

(c) The Department will terminate an advance determination of major contraction whenever it finds that the predicted major contraction has not occurred or will not occur.

§ 314.22 Notice of major contraction.

Upon finding a major contraction under §314.20, or making or terminating an advance determination under § 314.21, the Department will publish the finding in the FEDERAL REGISTER and send written notice of it to the persons listed in § 314.14.

PART 316—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

316.1 Purpose.
316.2 Applicability.
316.3 Notice of claim.
316.4 Interest, penalty fees, and collection charges.
316.5 Collection by offset.
316.6 Settlement of claims.
316.7 Referral for litigation.
316.8 Disclosure to consumer reporting agency.
316.9 DOT claims agent.

AUTHORITY: Secs. 204, 401, 402, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 740, 754, 757, 758, 771; 49 U.S.C. 1324, 1371, 1372, 1377, 1386. Secs. 3 and 5, Pub. L. 89-308, as amended, 89 Stat. 308, 96 Stat. 1754-1758, 31 U.S.C. 3701-3719.

SOURCE: Doc. No. 82, 50 FR 2428, Jan. 16, 1985, unless otherwise noted.

NOTE: The information collection requirements contained in this part have been approved by the Office of Management and Budget under number 3024-0070.

§ 316.1 Purpose.

This part implements the Federal Claims Collection Act, as amended by the Debt Collection Act and interpreted by the General Accounting Office and Department of Justice. It provides procedures under which the Department will collect claims owed to the United States arising from activities under its jurisdiction. The part further sets forth the procedures for the Department to determine and collect interest and other charges on those claims under the Debt Collection Act and for referral of unpaid claims for litigation.

§ 316.2 Applicability.

The part applies to all claims due the United States under the Federal Claims Collection Act as amended by the Debt Collection Act, arising from activities under the jurisdiction of the DOT under the responsibilities transferred to it by section 1601(b)(1) of the Federal Aviation Act of 1958, is amended, including amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest, and other sources.

§ 316.3 Notice of claim.

(a) DOT will send a written notice to any person who owes payment to the United States under this part, stating the basis for the claim, the possible interest and penalty charges under this part for non-payment, additional consequences of non-payment, and the date full payment is due. That payment will normally be due 30 days from the date notice under this part is mailed. The notice of claim will be sent return receipt requested.

(b) If the claim is disputed, the debtor shall respond to the notice in writing and state whether and when full payment is to be made, and the reasons for non-payment. If full payment is not made by the date asked in the notice, the debtor shall also state the reasons for the inability to make full payment and how and when payments are to be made.

(c) If no response to the notice is received by the date asked in the notice, the Department may take further action under this part or under 4 CFR Parts 101-105, and the Federal Claims Collection Act, as amended. These actions may include reports to credit bureaus, contracts with collection agencies, revocation of licensing or offset of Federal salary or other administrative offset, as authorized in 31 U.S.C. 3701-3719.

§ 316.4 Interest, penalty fees, and collection charges.

(a) DOT will assess interest on unpaid claims. The interest rate used by the Department is set by the Secretary of the Treasury. DOT will further charge penalty fees of not more than 6 percent per year of the unpaid claim for failure to pay a part of a debt more than 90 days past due. DOT will also impose collection charges to cover the costs of processing and handling overdue claims, based on the costs incurred.

(b) Interest on debts will be charged and will run from the date the notice of claim is mailed if the amount of the debt is not paid within 30 days from that date. The Department may extend the 30-day period when in the public interest. Interest will be calculated only on the principal of the debt. The rate of interest charged is the rate in effect on the date from which interest begins to run. The rate will remain fixed for the duration of the indebtedness.

(c) The Department may waive interest, collection charges or penalty fees if it finds that:

(1) The debtor is unable to pay any significant sum within a reasonable period of time;

(2) Collection of interest or charges jeopardizes collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including, under such circumstances, where an offset or installment payment agreement is in effect.

§ 316.5 Collection by offset.

(a) Whenever feasible, DOT will collect claims under this part by means of administrative offset against obligations of the United States to the debtor. Collection by Federal salary will be under the procedures in 4 CFR Part 102.

(b) The Department will notify the debtor in writing of its intent to use offset procedures to collect the debt unless the debtor agrees to repayment. The Department will ask other Federal agencies to help in the offset whenever possible. The notice to the debtor shall also include the type and amount of the claim and an explanation of the debtor's rights for records and review under 31 U.S.C. 3716(a).

§ 316.6 Settlement of claims.

(a) DOT may not waive the principal of any debt owed the United States.

(b) DOT may settle claims not exceeding $20,000 by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) The Government would be unable to enforce collection in full through litigation or administrative means within a reasonable time;

(3) The cost of collecting the full amount is not justified by the amount of the claim; or

(4) With respect to enforcement debts, DOT's enforcement policy would be served by settlement of the claim for less than the full amount.

§ 316.7 Referral for litigation.

Claims that cannot be settled under § 316.6 or for which collection action cannot be ended or suspended under 4 CFR Parts 103 and 104 will be referred to the General Accounting Office for litigation.

§ 316.8 Disclosure to consumer reporting agency.

DOT may disclose delinquent debts to consumer reporting agencies under the Federal Claims Collection Act, as amended. If, after a report has been made under this section, the status or amount of the claim substantially changes, DOT will notify the reporting agency in writing within 15 days of the change. Any request for verification information will be given to the reporting agency by the Department within 30 days of receipt of the request. Before disclosure to a reporting agency, the Department will obtain in writing a statement by the agency that it will comply with the Fair Credit Reporting Act and other applicable Federal statutes.

§ 316.9 DOT claims agent.

(a) The Assistant Secretary for Administration is the Claims Collection Agent for all claims under this part. The Assistant Secretary for Administration will take action as delegated under Part 385 of this chapter to carry out this part and the requirements of 4 CFR Parts 101 through 105.

(b) All action for the collection of claims under this part will be the responsibility of the Assistant Secretary for Administration. All DOT offices shall send documents supporting claims under this part to the Assistant Secretary for Administration for action. Delegated waivers or compromise under this part shall be with the concurrence of the General Counsel. Any action taken by the Assistant Secretary for Administration under this part involving air carriers receiving subsidy will be in consultation with the appropriate Office director(s).

PART 320—PROCEDURES FOR AWARDING JAPANESE CHARTER AUTHORIZATIONS

Subpart A—General Provisions

Sec.
320.1 Purpose.
320.2 Applicability.
320.3 Definitions and terminology.
320.4 Charter authorizations.
320.5 Related carriers counted as one.

Subpart B—Specific Procedures

320.10 Transfer of charter authorizations.
320.11 Unused charter authorizations.
320.12 Reallocation of authorizations.
320.13 Notice of intent to use charter authorizations.
320.14 Report of charter authorizations used.

AUTHORITY: Secs. 204, 401, 407, 1102, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 797 (49 U.S.C. 1324, 1371, 1377, 1502).

SOURCE: Doc. No. 82, 50 FR 2429, Jan. 16, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 320.1 Purpose.

This part sets out procedures governing the transfer or reallocation of authority to perform the charter flights authorized by the September 7, 1982, Memorandum of Understanding concerning bilateral aviation relations between the United States and Japan. That memorandum provides that each country's direct air carriers may perform 300 one-way charter flights between the two countries each year in accordance with country-of-origin rules. Charter authorizations were awarded in 1982 by grandfather allotments and initial lottery.

§ 320.2 Applicability.

This part applies to United States direct air carriers with respect to charter flights between the U.S. and Japan beginning on October 1, 1982.

§ 320.3 Definitions and terminology.

(a) "Authorization" means the authority to perform one of the 300 annual one-way charter flights between the United States and Japan authorized in the Memorandum of Understanding described in § 320.1.

(b) A charter authorization is "used" when the flight is performed.

(c) An "allocation year" runs from October 1 through September 30 and is used as a reference for reporting requirements and reallocation of forfeited authorizations.

§ 320.4 Charter authorizations.

(a) No charter flights between the United States and Japan shall be operated except in accordance with a charter authorization awarded or acquired under this part.

(b) A charter flight award obtained through the grandfather allotment or the initial lottery shall entitle the holder to authorizations for each of the three years beginning October 1, 1982, with the following exceptions:

(1) A charter flight authorization for an allocation year that has not been used by September 30 of that year will result in a penalty of a forfeiture of two charter flight authorizations for the remaining allocation years, as provided in § 320.15;

(2) A charter flight authorization obtained by request under § 320.15 shall be for one allocation year.

§ 320.5 Related carriers counted as one.

Two or more air carriers that are related will be considered as a single air carrier for the purposes of this part. One carrier is related to another carrier if it controls, is controlled by, or is under common control with the other carrier.

Subpart B—Specific Procedures

§ 320.10 Transfer of charter authorizations.

(a) Any air carrier holding a charter authorization awarded or acquired by it under this part may transfer it, for any consideration, to any other air carrier that meets the criteria set forth in § 320.12(a) as of the time of transfer.

(b) There shall be no penalty for the transfer of a charter authorization obtained in an initial lottery.

(c) An air carrier may transfer up to 10 percent of its grandfather authorizations for a given year without penalty. The base number shall not include any grandfather authorizations declined under § 320.11(c). A carrier's charter flight authorization for the remaining allocation years shall be reduced on a one-to-one basis for each flight beyond the 10 percent figure that it transfers.

(d) A transfer of a charter authorization shall not become effective until the transferring air carrier files a notice in duplicate with the DOT decisionmaker. The notice shall be labeled "Notice of Transfer of Japan Charter Authorization," and identify the transferred charter authorization by the flight authorization number(s) assigned under § 320.3(d). It shall be filed within 15 days after the date of the transaction, but in any event before departure of the authorized flight, whether the flight is performed by the transferee or by any subsequent transferee. The notice shall indicate the number of charter authorizations transferred and the date of the transaction, and shall be signed by both the transferor and the transferee.

(e) An air carrier that transfers a charter authorization to another carrier shall retain for at least 1 year after the conclusion of the allotment year for which it was awarded a record of the consideration received for the transfer.

(Approved by the Office of Management and Budget under control number 3024-0055)

§ 320.11 Unused charter authorizations.

(a) Any carrier that fails to use its charter flight authorization by September 30 of an allocation year shall be penalized in the remaining allocation years at the rate of two charter flight authorizations for each unused authorization. If this penalty results in a negative number, the carrier's allotment will be zero. The flight authorizations forfeited under this section shall be reallocated as provided in § 320.16.

(b) Notwithstanding paragraph (a) of this section, any carrier may without penalty return any of its allocated authorizations to the DOT.

For any subsequent year covered by this rule, until October 31, of that year.

(c) Returns shall be made by written notice to the Office of the Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, Washington, D.C. 20590, and shall be considered made as of the date the notice is received by that Office. The notice shall identify the air carrier and the number of authorizations returned, and shall be labeled "Return of Japan Charter Authorizations."

(d) The DOT decisionmaker reserves the right, on his or her own motion, to assess a forfeiture of authorizations on a carrier, and/or bar the carrier's requests for authorizations for a specified period, if he or she finds that the carrier has unreasonably requested and received authorizations without using them, or has transferred authorizations to another carrier that had no intention of operating under them.

§ 320.12 Reallocation of authorizations.

(a) Any authorizations forfeited under § 320.14 or §320.15, or returned to DOT under § 320.15(b), shall be reallocated according to the procedures of this section.

(b) The Department will maintain an up-to-date list of authorizations, out-standing authorizations returned, and the number currently available on request. This information is available to the public.

(c) An eligible carrier, as defined in § 320.12(a), may request authorizations from the Office of the Assistant Secretary for Policy and International Affairs. Each authorization shall be for one allocation year. The request shall be in writing, and labeled, "Request for Japan Charter Authorizations."

(d) Except as provided in this paragraph and paragraph (e) of this section, a request for authorizations may be made at any time. A particular carrier may make more than one request during any calendar month, but the total number of authorizations requested during any month shall be not more than 30. Requests made before October 1 for the allocation year beginning on that date, or a year after that date, shall be included in that carrier's "October request(s)," and when the number of flights requested is equal to 30, that carrier may not make another such request until November 1.

(e) A carrier that has been assessed a penalty under § 320.14 or § 320.15 with respect to a given allocation year (beginning on or after October 1, 1983) shall not make a request for authorizations for a subsequent year until April 1 of the subsequent year.

(f) DOT will accept requests for authorizations continuously during business hours, beginning at 9:00 a.m. on the first business day of the Department following the last day of the turn-back period specified in § 320.15 (b)(1) and (b)(2). Requests will be filled from the pool of returned authorizations in the order they are received by the Office of the Assistant Secretary for Policy and International Affairs. If the requests at any time exceed the number of returned authorizations, a stand-by list will be established. However, all requests received on the above opening date will be considered as having been received simultaneously, and if they exceed the number of returned authorizations, their order will be established by random selection under procedures agreed to by the requestors or set forth in an order of the DOT decisionmaker.

(Approved by the Office of Management and Budget under control number 3024-0055)

§ 320.13 Notice of intent to use charter authorization.

An air carrier shall file in duplicate with the Office of the Assistant Secretary for Policy and International Affairs a notice of its intention to use a charter authorization at least 7 days before departure of the flight. The notice shall be labeled "Notice of Intent To Use Japan Charter Authorization," and include the flight authorization number(s).

(Approved by the Office of Management and Budget under control number 3024-0055)

§ 320.14 Report of charter authorizations used.

Within 15 days after any month in which an air carrier uses a charter authorization, it shall file in duplicate a report with the Office of the Assistant Secretary for Policy and International Affairs. The report shall be labeled "Report of Japan Charter Authorizations Used." It shall include identification numbers of the authorizations, flight itineraries, flight dates, aircraft type, and the number of passengers or cargo tons transported. Passenger and cargo figures may be aggregated for the month.

(Approved by the Office of Management and Budget under control number 3024-0055)

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

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323.11 Answers to objections.
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323.13 DOT actions.
323.14 Temporary suspension authority for involuntary interruption of service.
323.15 Report to be filed after strikes.
323.16 Listings in schedule publications.
323.17 Delays in discontinuing service.
323.18 Carriers' obligations when terminating, suspending, or reducing air service.

AUTHORITY: Secs. 204, 401, 407, 411, and 419, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 769, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1381, 1389.

SOURCE: Doc. No. 82, 50 FR 2430, Jan. 16, 1985, unless otherwise noted.

§ 323.1 Applicability.

This part applies to certificated air carriers who terminate or suspend service to a point, or in a market, and to all air carriers who terminate, suspend, or reduce service below the level of essential air transportation under section 419 of the Act.

§ 323.2 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958, as amended.

"Certificated carrier" means a direct air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board (CAB) or DOT under section 401 of the Act, authorizing scheduled route service.

"Eligible point" means:

(1) Any point in the United States to which any certificated carrier was authorized under its section 401 certificate to provide service on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that the CAB designated as an eligible point under the Act; or

(3) Any other point in Alaska or Hawaii that the CAB or DOT designated as an eligible point under the Act.

"Essential air transportation" means the level of air transportation determined by the CAB or DOT for any eligible point under section 419(a)(2) or 419(b)(4) of the Act.

"FAA-designated hub" means any airport serving a small, medium, or large air traffic hub listed in the Department of Transportation publication, "Airport Activity Statistics of Certificated Route Carriers."

"United States" includes the several States, the District of Columbia, and the several territories and possessions of the United States. "State" includes any of the individual entities comprising the United States.

§ 323.3 Who shall file notices.

(a) *Terminations, suspensions, or reductions by certificated carriers.* The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:

(1) Terminate or suspend all passenger air transportation that it is providing to any eligible point in the United States when that termination or suspension will leave no certificated carriers serving that point. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two points;

(2) Reduce passenger air transportation so that any eligible point receives less than the level of essential air transportation determined by CAB or DOT;

(3) Terminate or suspend all passenger air transportation that it is providing to any eligible point in the United States for which CAB or DOT has not issued an essential air service determination under either § 325.5 or § 325.7 of this chapter, when that termination or suspension will leave only one cer-

tificated carrier serving that point. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two points;

(4) Reduce passenger air transportation to any eligible point in Alaska for which CAB or DOT has not determined the level of essential air transportation so that the service between that point and every other point served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average weekly number of round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between CAB or DOT and the State of Alaska; or

(5) Terminate, suspend, or reduce passenger air transportation at an eligible point for which CAB or DOT has issued, or is required to issue, an essential air transportation determination under section 419(a)(2) or section 419(b)(4) of the Act so that the total available seats of all the carriers linking that point to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two points.

(b) [Reserved]

(c) *Uncertificated carriers.* The notice described in §323.4(a) shall be filed by any uncertificated carrier that intends to terminate, suspend, or reduce:

(1) Air transportation so that any eligible point receives less than the level of essential air transportation determined by the CAB or DOT;

(2) Passenger air transportation to any eligible point for which CAB or DOT has not determined the level of essential air transportation, other than a point in Alaska, so that there is no FAA-designated hub from which the point receives at least two round trip flights per day, 5 days per week; or

(3) Passenger air transportation to any eligible point in Alaska, for which CAB or DOT has not determined the level of essential air transportation, so that the service between that point and every other point served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average number of weekly round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between CAB or DOT and the State of Alaska.

(d) For the purpose of this section, in ascertaining the level of air transportation being provided to a point or between two points, air transportation that has been the subject of a notice filed under this section shall be considered not in operation for the duration of the notice period.

(e) If a certificated carrier was, before October 24, 1978, granted authority to suspend air transportation, and that authority ends on a stated date, the carrier shall comply with the requirements of this part before continuing the suspension beyond that date.

(f) If a certificated carrier was, before October 24, 1978, granted authority to terminate or suspend air transportation, but has not suspended service, the carrier shall comply with the requirements of this part before terminating or suspending service.

§ 323.4 Contents of notices.

(a) The notice required under § 323.3 (a) and (c) shall contain:

(1) Identification of the carrier, including address and telephone number.

(2) Statement whether the carrier is a certificated carrier or an uncertificated carrier.

(3) Names of all other air carriers serving the point at the time of filing.

(4) Description of the service to be terminated, suspended, or reduced, including:

(i) Arrival and departure times at the affected points of the flights to be discontinued,

(ii) Aircraft type used,

(iii) Routes of the flights to be discontinued, and a statement of which routes, if any, will be left without nonstop or single-plane service from a certificated carrier by the intended change, and

(iv) Date of intended termination, suspension, or reduction of service.

(5) A statement whether CAB or DOT has determined the level of essential air transportation for the point, and

(i) If such a determination has been made, a statement whether the intended termination, suspension, or reduction will reduce air transportation to the point below the essential level; or

(ii) If such a determination has not been made, and the point is an eligible point, a statement whether the intended termination, suspension, or reduction reasonably appears to deprive the point of essential air transportation, and an explanation.

(6) If the point is an eligible point, the calendar date when objections are due under § 323.10.

(7) Proof of service upon all persons specified in § 323.7(a). The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(b) [Reserved]

(c) DOT may require any carrier filing notice to supply additional information.

(Approved by the Office of Management and Budget under control number 3024-0030)

§ 323.5 Time for filing notices.

(a) Except as specified by paragraph (b) of this section, a notice required by § 323.3 shall be filed at least:

(1) 90 days before the intended termination, suspension, or reduction, if it is filed by a certificated carrier or by an uncertificated carrier receiving compensation under section 419 of the Act for service to the point;

(2) 30 days before the intended termination, suspension, or reduction, if it is filed by an uncertificated carrier not receiving compensation under section 419 of the Act for service to the point.

(b) The notice required by §323.3(a)(3) shall be filed at least 30 days, and the notice required by § 323.3(a)(1) shall be filed at least 60 days, before the intended termination or suspension.

§ 323.6 General requirements for notices.

(a) Each notice filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in Subpart A of Part 302 of this chapter.

(b) Each notice filed under this part shall be titled to indicate the point(s) involved, and to indicate whether it is a 30-, 60-, or 90-day notice and whether it involves a termination, a suspension, or a reduction of air transportation.

§ 323.7 Service of notices.

(a) A copy of each notice required by § 323.3 shall be served upon:

(1) The chief executive of the principal city or other unit of local government at the affected point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are designated as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) [Reserved]

(3) The State agency with jurisdiction over transportation by air in the State containing any community required to be served under paragraph (a)(1) of this section. If there is no such State agency, the notice shall be sent to the governor of that State.

(4) The manager of, or other individual with direct supervision over and responsibility for, the airport at any community required to be served under paragraph (a)(1) of this section.

(5) The Postmaster General (marked for the attention of the Assistant General Counsel, Transportation), if the carrier filing the notice is authorized to transport United States mail to or from any community required to be served under paragraph (a)(1) of this section.

(6) Each air carrier providing scheduled service to a non-hub or FAA-des-

ignated small hub that is directly affected by the notice.

(7) The DOT Regional Office for the region in which the affected point is located.

(8) Any other person designated by DOT.

(b) [Reserved]

(c) Local communities, State agencies, and airport managers shall be served personally or by registered or certificated mail. All other persons may be served by ordinary mail.

§ 323.8 Exemptions.

Carriers are exempted from the following provisions of the Act or this part:

(a) Section 401(j) of the Act to the extent that that provision would otherwise require them to file a notice when terminating, suspending, or reducing service in foreign air transportation;

(b) Paragraphs (a)(1), (a)(3), and (a)(5) of § 323.3 to the extent that those provisions require them to file a notice when terminating or suspending the domestic leg of an international flight (fill-up service); and

(c) Sections 401(j) and 419 of the Act and all the provisions of this part to the extent that those provisions would otherwise require them to file a notice when terminating or suspending service at an eligible point at which they have been replaced under Part 326 of this chapter. This exemption shall apply only if the carrier terminates or suspends service on, or within 90 days after, the date that the new carrier begins service.

§ 323.9 Objections to notices.

(a) Any person may file an objection requesting DOT to prohibit any termination, suspension, or reduction of air transportation to an eligible point that is the subject of a notice filed under this part.

(b) Objections shall contain:

(1) Identification of the objector, including address and telephone number.

(2) A statement of DOT action requested.

(3) The schedules, routes, carriers, and aircraft types for all air transportation to the affected point other than that proposed to be terminated, suspended, or reduced.

(4) A suggested reasonable level of essential air transportation to the affected point.

(5) [Reserved]

(6) A justification of the suggested level of essential air transportation.

(7) Proof of service on the carrier filing the notice objected to, on all airport managers and State and local governments on whom the notice was filed, and any other person designated by DOT. The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(c) Objectors are strongly urged to include in their objections facts to support the suggested level of essential air transportation (e.g., traffic and enplanement data, other market studies, facts descriptive of the point's isolation or dependence on air transportation).

(Approved by the Office of Management and Budget under control number 3024-0030)

§ 323.10 Time for filing objections.

(a) Objections shall be filed not later than:

(1) 12 days from the date of filing of a 30-day notice;

(2) 15 days from the date of filing of a 60-day notice; or

(3) 20 days from the date of filing of a 90-day notice.

(b) The Department may accept late-filed objections, upon motion, for good cause shown.

(c) Whenever a notice has been filed earlier than required under § 323.5, the Department may extend the time for filing an objection to that notice.

§ 323.11 Answers to objections.

(a) Any person may file an answer to an objection filed under this part.

(b) An answer must be filed not later than 7 business days after the filing of the objection to which it responds. Late-filed answers may be allowed, and extensions of filing time granted, by the Department for the same reasons as for objections.

(c) An answer may contain the same type of facts and discussion permitted for objections under this part, and must contain:

(1) Proof of service on the objector, on all persons on whom the objection was required to be served, and on any other person designated by the Department. The proof of service shall include the names and addresses of all persons served.

(2) Identification of the answering party, including address and telephone number.

(Approved by the Office of Management and Budget under control number 3024-0030)

§ 323.12 General requirements for objections and answers.

(a) Each objection and answer filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in Subpart A of Part 302 of this chapter.

(b) Each objection shall be titled "Objection to Termination, Suspension, or Reduction of Air Service," and shall identify the notice to which it responds. Each answer shall be titled "Answer to Objection to Termination, Suspension, or Reduction of Air Service," and shall identify the objection to which it responds.

§ 323.13 DOT actions.

(a) If an objection has been filed under this part, DOT will dispose of the objection by order.

(b) If no objection has been filed within the time allowed by § 323.10(a), DOT may:

(1) By order prohibit a termination, suspension, or reduction that reasonably appears to deprive any eligible point of essential air transportation;

(2) Issue a notice or a final order that it will take no action on a notice filed under § 323.3; or

(3) Take no action.

§ 323.14 Temporary suspension authority for involuntary interruption of service.

(a) Any air carrier may temporarily suspend service without filing a notice under § 323.3 for any interruption of service that the carrier cannot reasonably be expected to foresee or control, such as rules, standards, or other action, or inaction, of the Administrator of the Federal Aviation Administration or of a foreign government, emergency measures, strikes, weather conditions, construction work on airports, or disasters. However, the provisions of this paragraph shall apply to interruptions due to airport inadequacies only if the carrier is unable to serve the point through any airport convenient to the point with the type of equipment last regularly used to serve the point.

(b) In the case of an interruption of service caused by a strike, the carrier shall give immediate notice of the interruption to DOT. Suspension authority under this section due to a strike shall expire 90 days after employees return to work.

(c) If service to a point is interrupted for more than 3 consecutive days for reasons beyond the carrier's control other than a strike, the holder shall give notice to DOT within 3 days following the date of first interruption, setting forth the date of first interruption and a full statement of the reasons for the interruption.

(d) The notice required by paragraph (b) or (c) of this section shall be marked for the attention of the Director, Office of Essential Air Service.

(Approved by the Office of Management and Budget under control number 3024-0030)

§ 323.15 Report to be filed after strikes.

(a) Within 15 days following resumption of service after a strike, an air carrier shall file a report with DOT containing a list of all flights that were canceled, the date they were canceled, and the date service was resumed.

(b) The report shall be marked for the attention of the Director, Office of Essential Air Service.

(Approved by the Office of Management and Budget under control number 3024-0030)

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under paragraphs (a)(2), (a)(4), (a)(5), or (c) of § 323.3 shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until DOT permits the flights to be discontinued. The listings may include a notice stating that the flights are "to be discontinued as of (date) subject to government approval."

§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if DOT requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after DOT permits it to do so.

§ 323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Any air carrier that terminates, suspends, or reduces air service, whether or not subject to the notice requirements of this part, shall make reasonable efforts to contact all passengers holding reservations on the affected flights to inform them of the flights' cancellation.

PART 324—PROCEDURES FOR COMPENSATING AIR CARRIERS FOR LOSSES

Sec.

324.1 Applicability.
324.2 Application for compensation for losses.
324.3 Procedures after receipt of application.
324.4 Informal conference procedures.
324.5 Participants in the conference.
324.6 Statement of confidentiality.
324.7 Post-conference procedure.
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324.9 Procedure for making advance payments.
324.10 Liability of carrier for excess payments.
324.11 Conformity with Subpart A of Part 302.

AUTHORITY: Secs. 204, 407, and 419 of Pub. L. 85-726, as amended, 72 Stat. 743, 766, 92 Stat. 1732, 49 U.S.C. 1324, 1377, 1389.

SOURCE: Doc. No. 82, 50 FR 2433, Jan. 16, 1985, unless otherwise noted.

§ 324.1 Applicability.

This part applies to proceedings, under sections 419(a)(7)(B) and 419(a)(7)(C) of the Act, for compensating an air carrier for losses incurred in complying with a DOT or CAB order to continue service.

§ 324.2 Application for compensation for losses.

(a) To receive compensation for its losses incurred in complying with a DOT or CAB order to continue to provide essential air service, an air carrier shall file in the Documentary Services Division an application titled "Application for Compensation for Losses."

(b) The application may be filed after the first 30-day compulsory service period, but shall not be filed later than 90 days after the carrier is allowed to suspend, terminate, or reduce service. It shall include:

(1) The dates of the compulsory service period covered by the application.

(2) The amount of compensation that is sought.

(3) Detailed information as to traffic, revenues, and expenses during the compulsory service period, and any investments that were required to perform the operations during that period.

(4) Full support for all information.

(5) The assurances required by § 379.4 of this chapter.

(6) A certification by a responsible officer of the air carrier that the information submitted is true and accurate to the best of his or her knowledge.

(7) A statement acknowledging that any compensation paid in advance under § 324.9 or periodically under § 324.3 is subject to adjustment by DOT.

(c) All information supplied by an air carrier in its application is subject to verification by DOT and DOT authorized auditors.

(d) DOT may dismiss an application if it does not contain the information required by this section and may close the case if a complete application is not filed within 90 days after the prior application was dismissed.

(Approved by the Office of Management and Budget under control number 3024-0034)

§ 324.3 Procedures after receipt of application.

(a) When the application is received *before* the air carrier has been permitted to institute its intended suspension, termination, or reduction in service, the procedure is as follows:

(1) DOT will issue an order setting an interim rate of compensation to be paid periodically to the carrier. This amount will be subject to DOT's final adjustment after the carrier is allowed to suspend, terminate, or reduce service as it requested.

(2) If the carrier seeks an increase in the amount of the periodic payments, it must submit another application. DOT may revise the amount of the periodic payments on its own initiative in order to avoid paying excessive interim compensation.

(3) Within 90 days after the carrier is allowed to institute its suspension, termination, or reduction in service, it shall submit another application under § 324.2 so that DOT can make a final adjustment of that carrier's claim.

(b) When the application is received *after* the air carrier has been permitted to suspend, terminate, or reduce service, the procedure is as follows:

(1) If DOT finds the application adequate to support the compensation requested, it will issue a show-cause order proposing an amount of payment to the carrier.

(2) If DOT finds the application insufficient to support the compensation requested, it may seek more information. If DOT does not agree to the compensation requested, it will send the applicant a statement describing the areas in which it disagrees or finds the information presented insufficient, and will refer the matter to an informal conference under § 324.4.

(3) The applicant may file an answer to the statement of disagreement not later than 15 days after it is received.

(c) Any payment will be considered to be made on the first day that losses compensated by that payment were incurred.

§ 324.4 Informal conference procedures.

(a) When there is disagreement on the amount of compensation that should be paid, DOT will arrange a conference with representatives of the air carrier applicant for the purpose of understanding and resolving the issues and facts in proceedings under this part.

(b) The conference shall be limited to the discussion of, and possible agreement on, the fair and reasonable amount of compensation for losses that should be paid to the air carrier required to continue service under DOT order.

(c) When DOT takes public action on the matter, a written summary of the conference discussion will be filed in the Documentary Services Division and sent to the carrier involved.

§ 324.5 Participants in the conference.

Other than DOT's staff and representatives of the carrier whose losses are in issue, no person may attend unless DOT's staff considers their presence necessary to resolve one or more of the issues under discussion. In such case, their participation shall be limited to such specific issues. No person, however, is required to attend.

§ 324.6 Statement of confidentiality.

All persons in an informal conference, during the period of the conference and until DOT takes public action on the matter, shall strictly protect information obtained in the conference from disclosure except to DOT's and the applicant's concerned employees and counsel. All persons participating in the conference other than DOT staff shall sign a statement in which they agree to so protect the information.

§ 324.7 Post-conference procedure.

(a) If any pertinent issues are not resolved at the conference, the air carrier may request a hearing or the opportunity to submit a written or oral statement to the Department. DOT will grant the request if such action is needed for further clarification and understanding of the issues. Granting of the request will not, however, limit the rights that the carrier might otherwise have under the Act and the rules of practice.

(b) If the carrier has not previously received compensation under this part for providing essential service to the point involved in its application, DOT shall issue a show-cause order proposing an amount of payment to the carrier.

(c) If the carrier has been receiving advance payments under § 324.9 or periodic payments under § 324.3(a)(2), DOT shall issue a show-cause order proposing the final adjustment of the carrier's claim, setting forth DOT's tentative findings of the amount it owes the carrier or the amount the carrier owes DOT.

§ 324.8 Effect of conference agreements.

(a) No agreement or understanding on a rate of compensation that is reached in the conference shall be binding on DOT or any participant.

(b) The carrier will have the right to take other procedural steps, including requesting a hearing, as if no conference had been held.

§ 324.9 Procedure for making advance payments.

(a) At any time after a carrier is ordered to continue service, DOT may, upon its own initiative or on petition by the carrier, order advance payments for a carrier's future losses subject to adjustment upon determination of the final rate.

(b) A carrier's petition shall be titled "Petition for Advance Compensation for Losses."

(c) The carrier shall include with its petition, or will be required by DOT to submit, estimates of the information required under § 324.2(b) and a full explanation of why it needs compensation in advance. The explanation shall include evidence of the carrier's financial condition and cash-flow prospects which taken together establish the need for an immediate cash infusion in order for service to be continued.

(d) Carriers receiving payments under this section may, absent a filing under § 324.2 of this part, continue to receive the amount of compensation ordered by the CAB or DOT under paragraph (a) of this section. DOT may revise the amount of these payments in order to avoid paying the carrier excessive compensation.

(Approved by the Office of Management and Budget under control number 3024-0034)

§ 324.10 Liability of carrier for excess payments.

(a) If the payments to a carrier exceed the amount authorized by CAB or DOT in its final adjustment, the affected air carrier shall be liable for repayment of the amount of such excess.

(b) If the carrier fails to make the repayment under paragraph (a) of this section, any future payment due that carrier under this chapter shall be applied to such indebtedness or DOT shall use any other means authorized by law to ensure repayment.

(c) Compliance with the provisions of this section shall not deprive a carrier of any right it would otherwise have to contest DOT's final adjustment.

§ 324.11 Conformity with Subpart A of Part 302.

The provisions of Subpart A of Part 302 of this chapter, except for § 302.8 of this chapter and any other provisions that are inconsistent with this part, shall apply to proceedings under this part.

PART 325—ESSENTIAL AIR SERVICE PROCEDURES

Sec.

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AUTHORITY: Secs. 204, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 92 Stat. 1732; 49 U.S.C. 1324, 1389.

SOURCE: Doc. No. 82, 50 FR 2434, Jan. 16, 1985, unless otherwise noted.

§ 325.1 Purpose.

The purpose of this part is to establish procedures to be followed in designating eligible points and in determining essential air transportation levels for eligible points, and in the appeals and periodic reviews of these determinations, under section 419 of the Act.

§ 325.2 Applicability.

This part applies to essential air service determinations for communities designated as eligible under section 419(a) of the Act and to eligible point designations and essential air service determinations for communities that qualify under section 419(b) of the Act. It applies to the gathering of data by the Department, and to the participation of State, local, and other officials and other interested persons in the designation and determination processes.

NOTE: Criteria for designating eligible points under section 419(b) are contained in Part 270 of this chapter. Guidelines for deciding essential air service levels are contained in Part 398 of this chapter.

§ 325.3 Definitions.

As used in this part, "eligible point" means:

(a) Any point in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate issued by CAB under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided;

(b) Any point in the United States and the several territories and possessions of the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that has been designated as an eligible point under the Act; or

(c) Any other point in Alaska or Hawaii that has been designated as an eligible point under the Act.

§ 325.4 State and local participation.

(a) DOT, on a periodic basis, will send a questionnaire to each eligible point that is served by not more than one certificated air carrier, or is designated as an eligible point under section 419(b) of the Act, or for which DOT is reviewing its essential air service needs. The questionnaire will be addressed to:

(1) The chief executive of the principal city, or other unit of local government at the affected point, that is named or has been previously named in a qualifying section 401 certificate. For points in Alaska or Hawaii that are named DOT as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point;

(2) The individual or entity with direct supervision over and responsibility for the airport at the eligible point; and

(3) The State agency with jurisdiction over air transportation in the State containing the eligible point. If there is no such State agency, the questionnaire will be sent to the governor of that State.

(b) Within 60 days after receipt of the questionnaire, five copies of the response shall be filed in the Documentary Services Division, unless the Department specifies another date. If no response is received within the period, essential air service for that eligible point may temporarily be set at the minimum level prescribed in section 419(f) of the Act.

(c) Any other interested person may, during the 60-day response period, submit information relevant to the essential air service level of that eligible point by filing in the Documentary Services Division, five copies of a document titled with the name of the point involved.

(d) As necessary, the DOT may request additional information to supplement the questionnaire.

(Approved by the Office of Management and Budget under control number 3024-0037)

§ 325.5 Determinations and designations.

(a) Not later than October 24, 1979, after reviewing all information submitted, CAB issued determinations of the essential level of air service for eligible points that, on October 24, 1978, were served by not more than one direct air carrier holding a certificate under section 401 of the Act for scheduled service to the point.

(b) DOT will issue a determination of the essential level of air service for a point within 6 months after each of the following events:

(1) A notice is received that service to an eligible point will be reduced to only one carrier that holds a section 401 certificate;

(2) A point is designated as an eligible point under section 419(b) of the Act and either paragraph (c) of this section, paragraph (d) of this section, or § 325.7(e); or

(3) A review was conducted of essential air service of that point under § 325.6.

(c) Not later than January 1, 1982, CAB designated the communities described in § 270.2(a) and (b) as eligible points or as ineligible.

(d) After January 1, 1982, DOT may designate communities in Alaska or Hawaii as eligible points if they apply for such designation.

§ 325.6 Periodic reviews.

(a) The Department will start a periodic review of essential air service within 1 year of the date of the previous determination of essential air service for eligible points receiving subsidized service, within 2 years of the date of the previous determination for eligible points in Alaska, and within 3 years of the date of the previous determination for eligible points without subsidized air service.

(b) The review shall be conducted in accordance with the procedures in §§ 325.4, 325.5 and 325.7.

(c) The Department may review the designation under section 419(b) of a community as an eligible point to determine whether that point continues to meet the criteria in part 270 of this chapter.

§ 325.7 Appeal of the determination or designation.

(a) Any person objecting to an essential air service determination may within 60 days after its issuance file in the Documentary Services Division a document titled "Appeal of Essential Service Determination." The appeal shall:

(1) Contain specific objections to the essential air service determination, including support for all such objections;

(2) State how the essential air service determination departs from the guidelines in Part 398 of this chapter or what extraordinary factors justify deviating from those guidelines; and

(3) Describe the level of air service that the appellant believes is essential for that community.

(b) Any person objecting to the designation of a point as ineligible under section 419(b) of the Act may within 60 days after the designation is issued file in the Documentary Services Division a document titled "Appeal of Eligible Point Designation."

(c) The Department shall appoint an appeal panel consisting of three senior employees, to be drawn from the Office of Essential Air Service, the Office of the General Counsel, and the Asistant Secretary for Governmental Affairs. No office shall be represented on an appeal panel by more then one employee. The three-member panel will process the appeal and make a recommendation to the Assistant Secretary for Policy and International Affairs.

(d) An informal conference may be held, or more information may be requested, before the three-member panel makes its recommendation.

(e) The DOT decisionmaker shall decide the appeal after receiving a recommendation from the three-member panel.

(f) If no appeal is filed within the 60-day period, a determination or designation will become final, unless stayed by the Department.

(g) Pending the outcome of an "Appeal of Essential Service Determination," the essential air service for the eligible point involved shall be the level set by the determination issued under § 325.5.

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§ 325.8 Informal conferences.

(a) If an appeal raises an issue that cannot be satisfactorily resolved on the basis of written submissions, the Department may order that an informal conference be held.

(b) The informal conference will be conducted by a senior DOT employee designated by the Assistant Secretary for Policy and International Affairs.

(c) Any interested person may attend the informal conference.

§ 325.9 Oral arguments.

If some appeals raise issues common to several communities so that expression of diverse viewpoints on these issues would help the Department dispose of them, the parties may be invited to participate in an oral argument at its offices in Washington, D.C.

§ 325.10 Modification of the designated level of essential air service.

(a) Any person may file with DOT a petition titled "Petition for Modification of Essential Air Service Level," asking to modify the essential air service level at a point.

(b) The petition shall identify the point affected, and specifically state the reasons why the petitioner believes the designated essential level is inadequate. It should contain any facts and arguments that support its requests, and describe the level of essential air service that should be substituted.

(c) Any person may, within 30 days after the filing of a petition for modification, file an answer to that petition titled "Answer to Petition for Modification."

(d) After review, the Department may seek more information and the procedures of §§ 325.5 and 325.7 will be followed.

(Approved by the Office of Management and Budget under control number 3024-0037)

§ 325.11 Form of documents.

All documents filed under this part shall be filed in the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and on their front page state:

(a) The title of the document;

(b) The name of the affected community;

(c) The name, address, and telephone number of a person who can be contacted for further information concerning the subject of the document; and

(d) In the case of a responsive document, the docket number of the document to which it responds.

§ 325.12 Service of documents.

Any person, except one filing individually as a consumer, who files a document under this part, including responses to the questionnaire, shall serve that document upon those listed in § 325.4(a) of this part and upon the following:

(a) The governor of the State in which the eligible point is located;

(b) Each air carrier providing scheduled service to the affected eligible point;

(c) In the case of a responsive document, the one who filed the document to which it responds; and

(d) The U.S. Postal Service, Assistant General Counsel, Transportation Division, Law Department, Washington, D.C. 20260.

§ 325.13 Environmental evaluations and energy information not required.

Notwithstanding any provision of Part 312 or Part 313 of this chapter, a person filing a petition or appeal under this part is not required to file an environmental evaluation or energy information with the application.

§ 325.14 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

PART 326—PROCEDURES FOR BUMPING SUBSIDIZED AIR CARRIERS FROM ELIGIBLE POINTS

Sec.
326.1 Purpose.
326.2 Definitions.
326.3 Application to bump an incumbent carrier.
326.4 Answers and replies to bumping applications.
326.5 Service of applications and answers.
326.6 Department action.
326.7 Standards for decision.
326.8 Transition from the incumbent carrier to the applicant.
326.9 Conformity with Subpart A of Part 302.

AUTHORITY: Secs. 204, 401, 407, 419, and 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 763, 766, 788, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1376, 1377, 1389, 1481.

SOURCE: Doc. No. 82, 50 FR 2436, Jan. 16, 1985, unless otherwise noted.

§ 326.1 Purpose.

The purpose of this part is to establish procedures for an air carrier applying under section 419(a)(11) or (b)(8) of the Act to provide essential air transportation to an eligible point, where it would be displacing another carrier that is providing essential air transportation under a subsidy rate previously established under section 419 of the Act. This part applies even if the applicant is not applying for a subsidy for itself but is merely seeking to terminate the incumbent carrier's subsidy.

§ 326.2 Definitions.

As used in this part:

(a) "Applicant" means an air carrier that files a bumping application.

(b) "Bumping application" means an application by an air carrier proposing to provide essential air transportation at an eligible point and requesting the Department to terminate the subsidy paid to an incumbent carrier for providing essential air transportation at that eligible point. The application may also request a subsidy to provide essential air transportation to that point.

(c) "Eligible point" means:

(1) Any community in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate of public convenience and necessity issued by the Board under section 401 of the Act, to provide passenger air transportation on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States and its several territories and possessions that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, that has been designated as eligible under the criteria in Part 270 of this chapter; or

(3) Any other point in Alaska or Hawaii that has been designated as an eligible point under Part 270 of this chapter.

(d) "Essential air transportation" means the level of air service that is guaranteed an eligible point under section 419 of the Act and the guidelines in Part 398 of this chapter.

(e) "Hub" means a point annually enplaning more than 0.05 percent of the total annual enplanements in the United States or listed as such by the Department of Transportation publication "Airport Activity Statistics of Certificated Route Carriers."

(f) "Incumbent carrier" means the air carrier serving an eligible point with subsidy at the time a bumping application is filed.

(g) "Subsidy under section 406" means payments made under section 406 of the Federal Aviation Act, Pub. L. 97-276, or any other appropriation act or continuing resolution that authorizes payments to air carriers based upon rate orders issued under section 406 of the Act.

§ 326.3 Application to bump an incumbent carrier.

(a) To replace an incumbent carrier at an eligible point, an air carrier shall file a bumping application in the Documentary Services Division.

(b) If the incumbent carrier is receiving its subsidy under section 406 of the Act, the application may be filed at any time after January 1, 1983.

(c) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the application may not be filed until the incumbent carrier has been serving the eligible point for at least 2 years.

(d) The application shall include:

(1) The name and address of the carrier filing the application;

(2) The name of the incumbent carrier;

(3) The name of the eligible point involved;

(4) Fitness information, as follows:

(i) If the applicant has already been found by the Department or CAB to be fit, willing, and able to provide scheduled service, it shall cite the most recent order establishing the finding.

(ii) If the applicant has not yet been found by the Department or CAB to be fit, willing, and able to provide a scheduled service, it shall include the fitness information required by Part 204 of this chapter to support such a finding. In making this showing, the applicant may incorporate by reference material submitted in a prior proceeding before the CAB or DOT.

(5) The information required by § 204.6(c) (2) and (3) of this chapter, even if the applicant is not seeking subsidy for itself;

(6) The service pattern proposed, including the hub and hubs to be served from the eligible point, the number of flights to be provided, whether the flights will be nonstop, and the type of aircraft to be employed. If the applicant is basing its application on improved service at the eligible point, it shall state how its proposed service represents an improvement over the incumbent carrier's service;

(7) If the applicant is seeking a subsidy, the assurances required by §§ 379.4 and 382.21 of this chapter;

(8) The earliest date or season that the applicant is prepared to begin service; and

(9) The availability of slots at the hub airport it proposes to serve.

(e) All information supplied by an air carrier in its application is subject to verification by DOT and DOT authorized auditors.

(Approved by the Office of Management and Budget under control number 3024-0063)

§ 326.4 Answers and replies to bumping applications.

(a) Any person may file an answer to an application filed under this part.

(b) To be considered by DOT, an answer should be filed not later than 30 days after the filing of the application to which it responds.

(c) An answer by the incumbent carrier may refute the fitness and reliability of the applicant to provide the essential air transportation, refute its ability to provide the service at the amount of compensation requested, deny that the applicant's proposed service represents a substantial improvement, and/or offer a counterproposal to that offered by the applicant. If the incumbent desires a hearing, it should request it at this time.

(d) An answer by representatives of the eligible point should state whether they consider the service pattern proposed by the applicant to be a substantial improvement in service and the reasons for their views.

(e) Any other carrier may submit a bumping application during the answer period. Such an application should include the information required by § 326.3(d).

(f) Any person may submit a reply to a counterproposal filed under paragraph (c) of this section or to another application filed under paragraph (e) of this section within 15 days of the end of the answer period.

(Approved by the Office of Management and Budget under control number 3024-0063)

§ 326.5 Service of applications and answers.

(a) The application shall be served upon:

(1) The chief executive of the principal city or other unit of local government of the eligible point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are named as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) The agency of the State, territory, or possession with jurisdiction over transportation by air in the area containing the eligible point. If there is no such agency, the application shall be served on the Governor of the State, territory, or possession.

(3) The manager of, or other individual with direct supervision over and responsibility for, the airport at the eligible point.

(4) Each air carrier providing scheduled passenger service at the eligible point.

(5) The DOT Regional Office for the region in which the eligible point is located.

(6) Any other person designated by the Department.

(b) Answers to applications and replies to answers shall be served on the persons listed in paragraph (a) of this section, on the applicant, and on the person that filed the answer to which the reply is directed.

§ 326.6 Department action.

(a) After an application is filed under this part and the answer and reply period has elapsed, a rate conference will be held with the applicant or applicants and with the incumbent carrier, if it has filed a counter proposal, to determine the reasonableness of the compensation requested. One or more of the following actions may also be taken:

(1) A conference may be held with the eligible point concerned to determine its view on the relative merits of the present and proposed service pattern.

(2) Additional information may be requested.

(3) The application may be consolidated with the incumbent carrier's rate renegotiation proceeding if the incumbent's rate term is close to expiration.

(4) Additional service and subsidy proposals may be solicited.

(b) After the Department completes its reviews and conferences, and obtains any necessary information, it will take one or more of the following actions:

(1) Issue an order to show cause proposing to grant the application;

(2) Deny the application if the applicant fails to meet the criteria set forth in § 326.7;

(3) Set the application for an oral evidentiary hearing under the following circumstances:

(i) There are material facts in dispute;

(ii) These facts are of decisional significance; and

(iii) The Department finds that the disputed facts can best be resolved in an oral evidentiary hearing.

(4) Set the application for oral arguments before the Department.

§ 326.7 Standards for decision.

(a) DOT will not grant an application under this part unless;

(1) It finds, or previously found, that the applicant is fit, willing, and able to provide scheduled air transportation;

(2) It finds that the applicant will provide the essential air transportation at the eligible point in a reliable manner; and

(3) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the applicant shows by a preponderance of the evidence that its proposal will result in either of the following:

(i) A substantial improvement in the air service being provided the eligible point with no increase in subsidy; or

(ii) A substantial decrease in the amount of subsidy that will be required to provide essential air transportation at the eligible point.

(b) To be considered substantial, the proposed decrease in the amount of subsidy should be at least $50,000 per year or 10 percent of the incumbent carrier's subsidy rate, whichever is greater.

(c) In deciding whether a proposed service pattern represents a substantial improvement in air service, DOT will consider the following factors:

(1) Which hub or hubs the applicant proposes to serve from the eligible point;

(2) The number of stops that the applicant will make between the designated hub and the eligible point;

(3) The size and type of aircraft, including whether they are pressurized,

that the applicant intends to use at the eligible point;

(4) An increase in the number of flights or seats that the applicant proposes to provide at the eligible point, if:

(i) The increased frequencies are combined with a change in aircraft so as not to result in the Department paying a subsidy for more than essential air transportation; or

(ii) A petition has been filed under § 325.10 of this chapter to raise the eligible point's essential air transportation level.

(5) Service-related advantages held by the applicant such as computerized reservation systems or joint fares.

(d) In addition to the factors described above, the Department, in evaluating an application, will consider the following:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the eligible point involved;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the eligible point involved;

(3) The relative efficiency of the aircraft that the competing carriers use or propose to use;

(4) The relative financial strength of the competing carriers;

(5) The time necessary for the applicant to begin providing the service it proposes;

(6) The performance of the incumbent carrier in serving the eligible point involved;

(7) The amount of time that the incumbent carrier was on the subsidy rate to question;

(8) The effect of granting the bumping application on other points in the incumbent carrier's system;

(9) The availability of slots for the applicant at the hub or hubs that it proposes to serve; and

(10) In Alaska, the experience of the applicant in providing scheduled air service, or significant patterns of nonscheduled air service under Part 298 of this chapter, in that State.

(e) In evaluating the standards described above, the Department will give great weight to the views of representatives of the eligible point involved.

§ 326.8 Transition from the incoumbent carrier to the applicant.

(a) If an applicant is successful in its bid to replace an incumbent carrier and receive a subsidy for serving the eligible point, it shall notify DOT and the incumbent carrier of the date that it is prepared to begin service at the eligible point. It shall allow the incumbent 45 days to close down its operation at the eligible point, unless another date is agreed on.

(b) The incumbent carrier shall continue service at the eligible point until the successful applicant begins service there.

(c) The Department will continue to pay the subsidy to the incumbent carrier for at least 45 days after it grants the bumping application, unless the two carriers agree to a different date for the transfer of service. DOT will continue to pay the subsidy to the incumbent carrier thereafter until the successful applicant begins service at the eligible point.

§ 326.9 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Subpart A—General Provisions

Sec.
372.1 Applicability.
372.2 Definitions.
372.3 Waiver.
372.4 Enforcement.
372.5 Suspension of revocation of authority.

Subpart B—Exemption

372.10 Exemption.

Subpart C—Conditions and Limitations

372.20 Requirement of operating authorization.
372.21 Solicitation.
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372.23 Methods of competition.
372.24 Surety bond, depository agreement, escrow agreement.
372.25 Tariffs to be filed for charter trips.
372.26 [Reserved]
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372.28 Record retention.

Subpart D—Operating Authorization

372.30 Application.
372.31 Issuance.
372.32 Effective period.
372.33 Nontransferability.

AUTHORITY: Secs. 101(3), 204, 401, 402, 407, and 416 of Pub. L. 85-726, as amended; 72 Stat. 737, 743, 754, 757, 766, and 771; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, and 1386.

SOURCE: SPR-54, 37 FR 11163, June 3, 1972, unless otherwise noted.

Subpart A—General Provisions

§ 372.1 Applicability.

This part establishes the terms and conditions governing the furnishing of overseas military personnel charters in air transportation by direct air carriers or foreign air carriers and by overseas military charter operators. This part also relieves charter operators from the provisions of section 401 of the Act, for the purpose of enabling them to provide overseas military personnel charters utilizing aircraft chartered from such direct air carriers or foreign air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

[SPR-60, 37 FR 19122, Sept. 19, 1972]

§ 372.2 Definitions.

As used in this part, unless the context otherwise requires:

"Charter" means overseas military personnel charter.

"Charter operator" means overseas military personnel charter operator.

"Charter participant" means a member of the overseas military personnel charter group.

"Charter price" means the total amount of money paid by the charter participant to the charter operator for air transportation.

"Immediate family" means only the following persons: the spouse, children, parents, parents of the spouse, children of the parents, and children of the parents of the spouse of (1) military personnel on active duty with the United States Armed Forces (including Coast Guard) stationed outside the contiguous states of the United States and the District of Columbia, and (2) civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where U.S. military personnel are stationed.

"Overseas military personnel charter" means a charter, either one-way or round-trip, limited to military personnel on active duty with the U.S. Armed Forces (including the Coast Guard), stationed outside the 48 contiguous States of the United States and the District of Columbia, and/or civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where such U.S. military personnel are stationed, and/or the immediate families of the foregoing persons, where the following conditions are met: (a) All military personnel and civilian employees of the Department of Defense participating in the charter are on official furlough, leave, pass, or other authorized absence from duty, and (b) the transportation is between a place in the 48 contiguous States of the United States or the District of Columbia and a place in Alaska, Hawaii, or a territory or possession of the United States, or a foreign country in which military personnel of the United States are stationed: *Provided, however,* That nothing contained herein shall preclude an overseas military personnel charter operator from utilizing any unused space on an aircraft chartered by it pursuant to this part for the transportation, on a free or reduced-rate basis, of such charter operator's employees, directors, and officers, and the parents and immediate families of such persons, subject to the provisions of Part 223 of this chapter.

"Overseas military personnel charter operator" means any citizen of the United States, as defined in section 101 (13) of the Federal Aviation Act

(49 U.S.C. 1301(13)) authorized hereunder to engage in the formation of overseas military personnel charter groups and who complies with the provisions of this part.

"Person" means any individual, firm, association, partnership, or corporation.

[SPR-54, 37 FR 11163, June 3, 1972, as amended by SPR-69, 38 FR 14164, May 30, 1973; SPR-109, 41 FR 35158, Aug. 20, 1976]

§ 372.3 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a charter operator of a written request therefor: *Provided*, That such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 372.4 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or in the case of willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

§ 372.5 Suspension or revocation of authority.

The Board reserves the power to suspend the authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public, or to revoke such authority for cause.

Subpart B—Exemption

§ 372.10 Exemption.

Charter operators are hereby relieved from the provisions of section 401 of the Act only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to organize and arrange overseas military personnel charters.

[SPR-176, 46 FR 43960, Sept. 2, 1981]

Subpart C—Conditions and Limitations

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell, soliciting or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued by the Board pursuant to § 372.31 authorizing such person to engage in such transportation: *Provided*, That any person engaged in operations as an overseas military personnel charter operator on August 27, 1971, may continue so to engage and be relieved of complying with § 372.24, until such time as the Board shall pass upon an application for an operating authorization, if within 45 days after the effective date of this part such person files an application pursuant to § 372.30: *And provided further*, That until October 1, 1972, the passengers participating in a charter flight performed pursuant to an agreement between any such person and any direct air carrier or foreign air carrier, which was fully executed prior to the effective date of this Part 372 and a copy of which is filed with the Board (Director, Bureau of Pricing and Domestic Aviation) no later than 14 days after the effective date of this part, may be drawn not only from the eligible classes of persons specified in § 372.2, but also from the following additional classes of persons, and the members of their immediate families; U.S. military personnel stationed anywhere in the United States; retired U.S. military personnel; and civilian employees of the Department of Defense stationed anywhere in the United States.

§ 372.21 Solicitation.

Solicitation of charter participants through advertising by charter operators shall be restricted to the following:

(a) Radio and television stations operated by the U.S. Armed Forces;

(b) Newspapers, periodicals, or other printed media disseminated and distributed primarily among military personnel or civilian employees of the Department of Defense: *Provided, however,* That any printed advertisement of a charter operator shall include a statement explaining that eligibility for participation in such charters is limited to military servicemen who are stationed outside of the 48 contiguous States and the District of Columbia, and/or U.S. citizen civilian DOD employees who are stationed in a foreign country, or a U.S. territory or possession, where U.S. military personnel are stationed, and their respective immediate families.

§ 372.22 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 372.23 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 372.24 Surety bond, depository agreement, escrow agreement.

(a) Before selling or offering to sell, soliciting or advertising any charter flight, a charter operator shall comply with one of the three following requirements:

(1) The charter operator shall furnish a surety bond in an amount not less than the maximum fare held out for charter flights proposed to be operated during each calendar month multiplied by 90 percent of the number of available seats on such flights: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare. Such bond shall be filed with the Board not less than 45 days prior to the commencement of the calendar month covered by the bond together with a list of flights proposed to be operated during the month showing charter price, departure dates, equipment to be used for each flight and the seating capacity: *Provided, however,* That the amount of the bond shall be increased if additional charter flights are proposed or may be reduced if proposed charter flights are canceled, in which event a substitute bond and amended list of proposed flights shall be filed with the Board within 10 days of the date that the charter operator adds flights or cancels flights previously proposed, but in no event later than 2 days prior to the operation of any such additional charter flights; or

(2) The charter operator shall:

(i) Furnish and file with the Board a surety bond in the amount of $100,000 for the protection of the charter participants: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(*a*) Each participant shall pay for his deposit and subsequent payments comprising the charter participant's tariff fare only by check or money order payable to such bank which shall maintain a separate accounting for each flight: *Provided, however,* That if the participant makes a cash deposit, the charter operator who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit;

(*b*) The bank shall not pay the air carrier or foreign air carrier the charter price for the transportation earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date and price by the charter operator;

(*c*) The bank shall reimburse the charter operator for refunds made by the latter to the participants upon written notification from the charter operator;

(*d*) If the charter operator notifies the bank that a flight has been canceled, the bank shall make the applicable refunds directly to the participants;

(*e*) Except as provided in item (*c*) of this subdivision, the bank shall not pay any funds from the account to the charter operator prior to 2 banking days after completion of each flight when the balance in the account shall be paid to the charter operator upon certification of the completion date by the charter operator and direct air carrier;

(*f*) Notwithstanding any provisions above, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of surety bond in the form prescribed herein in excess of the minimum bond required by paragraph (a)(2)(i) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: *Provided*, That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: *And provided, further*, That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; or

(3) The charter operator shall:

(i) Furnish and file with the Board a surety bond in the amount of $100,000 for the protection of the charter participants: *Provided, however*, That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(*a*) Whenever the gross amount of customers' deposits exceeds 25 percent of the charter operator's net worth, as computed under generally accepted accounting principles, the charter operator shall, on or before the 30th day of the succeeding month, place in escrow or in trust with the bank cash in an amount at least equal to the amount by which such deposits exceed 25 percent of its net worth: *Provided*, That negotiable securities may be substituted for cash, but the market value thereof shall at all times be not less than the amount of cash for which they are substituted;

(*b*) The escrow agreement or the trust agreement between the bank and the operator shall not be effective until approved by the Board. Claims against the escrow or trust may be made only with respect to the nonperformance of air transportation.

(b) As used in this section, the term "bank" means a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Any bond furnished under this section shall insure the financial responsibility of the charter operator and the supplying of the air transportation in accordance with the contract between the charter operator and the charter participants, and shall be in the form set forth as Appendix B[1] attached to this Part 372. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (fire and casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates or in which the charter operator is incorporated. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific charter or charters to which it relates: *Provided, however,* That these data may be set forth in an addendum attached to the bond which addendum must be signed by the charter operator and the surety company. It shall be effective on or before the date the operating authorization becomes effective. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

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[1] Appendix B, filed as part of original document.

(d) Any bond furnished under this section shall provide that unless the charter participant files a claim with the charter operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such charter participant. The contract between the charter operator and the charter participants shall contain notice of this provision.

(Secs. 101(3), 204(a), 401, and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, and 757, as amended, 49 U.S.C. 1301, 1324, 1371 and 1372)

[SPR-54, 37 FR 11163, June 3, 1972, as amended by SPR-60, 37 FR 19122, Sept. 19, 1972; SPR-63, 37 FR 22849, Oct. 26, 1972; SPR-95, 40 FR 52355, Nov. 10, 1975]

§ 372.25 Tariffs to be filed for charter trips.

Effective October 1, 1972, a charter operator shall not operate or sell or offer to sell, solicit or advertise, any charter trips unless such operator shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

§ 372.26 [Reserved]

§ 372.27 Name of operator.

It shall be an express condition upon the exercise of the exemption herein granted and the operating authorizations issued hereunder, that the charter operator concerned, in holding out to the public and performing air transportation services, shall do so only in a name the use of which is authorized under the provisions of Part 215 of this chapter.

§ 372.28 Record retention.[2]

(a) Every charter operator conducting a charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the charter or series of charters.

(b) Every charter operator shall make the documents listed in this section available upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

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[2] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing of document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C. sec. 1001.

Subpart D—Operating Authorization

§ 372.30 Application.

(a) *Application form.* Any person desiring to operate as an overseas military personnel charter operator may apply to the Board for an appropriate operating authorization. Such an applicant shall execute in duplicate an "Application for Operating Authorization as an Overseas Military Personnel Charter Operator" (CAB Form 372). The application shall be certified by a responsible official of such person and shall contain the following information:[3]

(1) Date;

(2) Name of applicant, trade names, and name in which authorization is to be issued;

(3) Address of principal office and mailing address;

(4) Form of organization (i.e., corporation, partnership, etc.), State under whose laws company is authorized to operate and date company was formed;

(5) A list containing the names of each officer, director, partner, owner, or member of applicant, and holder of more than 5 percent of outstanding stock if a corporation, or owner of more than a 5-percent interest if other than a corporation; an indication as to whether or not 75 percent or more of the voting interest is owned or controlled by citizens of the United States or one of its possessions; if more than 5 percent of applicant's stock is held by a corporation, an indication must be made as to whether or not 75 percent or more of the voting interest in such corporation is owned or controlled by citizens of the United States or one of its possessions;

(6) A description of current business activities and of former business experience in, or related to, the transportation field;

(7) Description of operating authority granted applicant by agencies of the U.S. Government (such as customs broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.), and, if applicable, reasons for revocation or other termination;

(8) List of names of the officers, owners, etc., of applicants who have at any time applied for any type of authority or registration from the Civil Aeronautics Board and, if applicable, reasons for revocation or other termination;

(9) List of officers, owners, etc., of applicant who have at any time been employed by or associated with any air carrier authorized to operate by the Civil Aeronautics Board indicating dates of employment and capacity in which employed;

(10) Any additional information in support of application;

(11) Balance sheet as of a date not more than 3 months prior to application and profit and loss statement for the full year ending as of date of balance sheet;

(12) Brief account of any arrangement by which applicant will have available financial sources and facilities of other companies or individuals;

(13) The charter operator's surety bond and, where applicable, a copy of the depository, escrow or trust agreement with a bank as provided in § 372.24.[4]

(b) *Additional information.* The applicant shall also submit such other additional information pertinent to its proposed activities as may be requested by the Board with respect to any individual application.

§ 372.31 Issuance.

(a) If, after the filing of an application for an operating authorization, it appears that the applicant is capable of performing the air transportation authorized by this part as an overseas military personnel charter operator and of conforming to the provisions of the Act and all rules and requirements thereunder, and that the conduct of such operations by the applicant will not be inconsistent with the public interest, the applicant will be notified by letter. Such notification will advise the applicant that, upon the filing of a valid tariff pursuant to § 372.25, an operating authorization will be issued to the applicant.

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[3] NOTE: Any person who claims to have been engaged in operations as an overseas military personnel charter operator on Aug. 27, 1971, and who has filed an application within 45 days after the effective date of this part shall also include certification as to the periods during which it has been continuously engaged in such operations. (See § 372.20.)

[4] The surety bond and, where applicable, a copy of the depository escrow, or trust agreement with the bank should not be filed with the Board until the applicant is notified by the Board to do so. See instructions to CAB Form 372, Appendix A, filed as part of the original document.

(b) If, after the filing of an application for an operating authorization, it appears that the applicant has not made a due showing of capability or that the conduct of operations by the applicant might otherwise be inconsistent with the public interest, the Board shall by letter notify the applicant of its findings to that effect. The Board may dismiss any such application unless within 30 days of the date of the mailing of such letter, the applicant has in writing requested reconsideration and submitted such additional information as it believes will make the necessary showing, or requested that the application be assigned for hearing, in which case the applicant shall outline the evidence to be presented at such hearing and shall show the need for hearing in order properly to present its case.

(c) In the event that reconsideration or hearing is requested, the Board may, without notice or hearing, enter an order of approval or of disapproval in accordance without notice or hearing, enter an order of approval or of disapproval in accordance with its determination of the public interest upon the showing made, or on its own initiative may assign the application for hearing.

§ 372.32 Effective period.

Each operating authorization shall be effective upon the date specified therein, and shall continue in effect, unless sooner suspended or revoked, during such period as the authority provided by this part shall remain in effect, or if issued for a limited period of time, shall continue in effect until the expiration thereof unless sooner suspended or revoked.

§ 372.33 Nontransferability.

(a) An operating authorization shall be nontransferable and shall be effective only with respect to the person named therein or his successor by operation of law, subject to the provisions of this section. The following persons may temporarily continue operations under an operating authorization issued in the name of another person, for a maximum period of 6 months from the effective date of succession, by giving written notice of such succession to the Board within 60 days after the succession:

(1) Administrators or executors of deceased persons;

(2) Guardians of incapacitated persons;

(3) Surviving partner or partners collectively of dissolved partnerships; and

(4) Trustees, receivers, conservators, assignees, or other such persons who are authorized by law to collect and preserve the property of financially disabled persons.

(b) All operations by successors, as above authorized, shall be performed in the name or names of the prior holder of the operating authorization and the name of the successor, whose capacity shall also be designated. Any successor desiring to continue operations after the expiration of the 6-month period above authorized must file an application for a new operating authorization within 120 days after such succession. If a timely application is filed, such successor may continue operations until final disposition of the application by the Board.

PART 373—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.

373.1 Purpose.
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373.29 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); secs. 204 and 1002 of Pub. L. 85-726, as amended, 72 Stat. 743, 788; 49 U.S.C. 1324, 1482.

SOURCE: SPR-186, 47 FR 16007, Apr. 14, 1982, unless otherwise noted.

NOTE: the filing requirements contained in §§ 373.10, 373.11 and 373.12 not subject to the requirements of 44 U.S.C. 3507.

Subpart A—General Provisions

§ 373.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities that are parties to certain administrative proceedings (called "adversary adjudications") before the Civil Aeronautics Board. An eligible party may receive an award when it prevails over a respondent bureau unless the respondent bureau's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Board will use to make them.

§ 373.2 Definitions.

As used in this part:

(a) "The Act" means section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96-481.

(b) "Adversary adjudication" means an adjudication before the Civil Aeronautics Board under 5 U.S.C. 554 in which the position of any component of the Board is represented by counsel or other representative who enters an appearance and participates in the proceeding.

(c) "Respondent bureau" means the unit of the Board that participates in a proceeding covered under this part in which the applicant prevails and that is alleged by the applicant to have taken a "substantially unjustified" position in that proceeding.

§ 373.3 When the Act applies.

The Act applies to any adversary adjudication pending before the Board at any time between October 1, 1981 and September 30, 1984, or the date of final Board sunset, whichever is earlier. This includes proceedings begun before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Board action occurs.

EDITORIAL NOTE: Consult the Federal Register for a document extending the effectiveness of these regulations.

§ 373.4 Proceedings covered.

(a) The Act applies to proceedings of the Civil Aeronautics Board that are required by statute to be conducted as adversary adjudications. Any proceeding in which the Board may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." For the Civil Aeronautics Board, the types of proceedings generally covered include:

(1) Enforcement proceedings;

(2) Merger and acquisition proceedings;

(3) Alterations, amendments, modifications, suspensions or revocations of a certificate to engage in foreign air transportation where the holder of such certificate requests an oral evidentiary hearing.

(b) The Board may also designate a proceeding not listed in paragraph (a) as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Board's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue to be resolved in disposing of the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 373.5 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge or the Board may determine that financial relationships of the applicant other than those described in this paragraph consititute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 373.6 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the respondent bureau over which the applicant has prevailed was substantially justified.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 373.7 Allowable fees and expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project which the Board finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees;

(4) Any necessary or reasonable expenses incurred.

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, even if they were made available without charge or at a reduced rate to the applicant, except that:

(1) Compensation for an expert witness will not exceed $28.12 per hour; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge or Board shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding;

(5) Such other factors as may bear on the value of the services provided.

§ 373.8 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Board may adopt additional regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The Board will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Board a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with 14 CFR 302.38. The petition should identify the rate the petitioner believes the Board should establish and types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Board will respond to the petition within 120 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

Subpart B—Information Required From Applicants

§ 373.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall be filed in the Docket Section under a new docket number and shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the respondent bureau or agencies in the proceeding that the applicant alleges was not substantially justified.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling of the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) If the applicant is a partnership, corporation, association, organization, or a sole owner of an incorporated business, the application shall state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall itemize the amount of fees and expenses for which an award is sought.

(e) The applicant may also include any other matters that the applicant wishes the Board to consider in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant or an authorized officer with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. The application shall contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and complete to the best of the signer's information and belief.

§ 373.11 Net worth exhibits.

(a) Each applicant other than a qualified tax-exempt organization or cooperative association must submit with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 373.5(f) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge or Board may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring 1 year prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding.

§ 373.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter for which an award is sought. A separate itemized statement shall be submitted by each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge or Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 373.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this part, final disposition means the later of:

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an

administrative law judge becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Board's final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

Subpart C—Procedures for Considering Applications

§ 373.20 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties in accordance with 14 CFR Part 302.

§ 373.21 Answer to application.

(a) Any answer of the respondent bureau shall be filed within 30 days after service of an application.

(b) If the respondent bureau and the applicant believe that they can reach a settlement concerning the award, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the administrative law judge or Board upon request by the respondent bureau and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already in the record of the proceeding, the respondent bureau shall include with the answer either supporting affidavits or a request for further proceedings under § 373.25.

§ 373.22 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 373.25.

§ 373.23 Comments by other parties.

Any party to a proceeding other than the applicant and respondent bureau may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the administrative law judge or Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 373.24 Settlement.

The applicant and the respondent bureau may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the Board's settlement procedure. If a prevailing party and the respondent bureau agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 373.25 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. Further proceedings shall be held, however, when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge or Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 373.26 Decisions.

The administrative law judge or Board shall issue an initial or tentative decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the respondent bureau's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 373.27 Board review.

Either the applicant or respondent bureau may seek review of the initial decision on the fee application, or the Board may decide to review the decision on its own initiative. If neither the applicant nor the respondent bureau seeks review and the Board does not take review on its own initiative, the initial decision on the application shall become a final decision of the agency 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Board. If review is taken, the Board will issue a final decision on the application or remand the application to the administrative law judge for final proceedings.

§ 373.28 Judicial review.

Judicial review of final Board decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 373.29 Payment of award.

An applicant seeking payment of an award shall submit to the Board's Comptroller a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The documents should be sent to the Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. The Board will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the respondent bureau or any other party to the proceeding.

PART 374—IMPLEMENTATION OF THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO AIR CARRIERS AND FOREIGN AIR CARRIERS

Sec.

374.1 Purpose.

374.2 Applicability.

374.3 Compliance with Consumer Credit Protection Act and regulations.

374.4 Enforcement procedure.

AUTHORITY: Secs. 204, 411, Pub. L. 85-726, as amended, 72 Stat. 743, 769, 49 U.S.C. 1324, 1381; Consumer Credit Protection Act, as amended, 82 Stat. 147, 84 Stat. 49, 1126, 88 Stat. 1511, 89 Stat. 1159, 90 Stat. 197, 198, 251, 91 Stat. 161, 162, 874, 92 Stat. 2676, 3728, 15 U.S.C. 1601-1693r; 12 CFR Parts 202 and 226.

SOURCE: SPR-175, 46 FR 43960, Sept. 2, 1981, unless otherwise noted.

§ 374.1 Purpose.

The purpose of this part is to state the Board's responsibility to enforce air carrier and foreign air carrier compliance with Subchapters I, III, IV, V and VI of the Consumer Credit Protection Act and Regulations B and Z of the Board of Governors of the Federal Reserve System.

§ 374.2 Applicability.

This part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions.

§ 374.3 Compliance with the Consumer Credit Protection Act and regulations.

(a) Each air carrier and foreign air carrier shall comply with the requirements of the Consumer Credit Protection Act, 15 U.S.C. 1601-1693r. Any violation of the following requirements of that Act will be a violation of the Federal Aviation Act of 1958, enforceable by the Board:

(1) The Truth in Lending Act, as supplemented by the Fair Credit Billing Act, 15 U.S.C. 1601-1667, requiring disclosure of credit terms to the consumer and prohibiting inaccurate or unfair credit billing and credit card practices.

(2) The Fair Credit Reporting Act, 15 U.S.C. 1681-1681t, setting forth requirements to be met by consumer

credit reporting agencies and persons who use consumer credit reports.

(3) The Equal Credit Opportunity Act, 15 U.S.C. 1691-1691f, prohibiting discrimination in credit transactions on the basis of race, color, religion, national origin, sex, marital status, age, or receipt of public assistance, or against applicants who have exercised their rights under that Act.

(4) The Fair Debt Collection Practices Act, 15 U.S.C. 1692-1692o, prohibiting abusive, deceptive, and unfair debt collection practices.

(5) The Electronic Fund Transfer Act, 15 U.S.C. 1693-1693r, establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.

(b) Each air carrier and foreign air carrier shall comply with the requirements of Regulation B, 12 CFR Part 202, and Regulation Z, 12 CFR Part 226, of the Board of Governors of the Federal Reserve Board. Any violation of the requirements of those regulations will be a violation of the Federal Aviation Act of 1958, enforceable by the Board.

§ 374.4 Enforcement procedure.

The statutes and regulations referred to in § 374.3 may be enforced by an enforcement procedure as set forth in Subpart B of Part 302 of this chapter or by the assessment of civil penalties under section 901 of the Federal Aviation Act of 1958.

PART 374a—EXTENSION OF CREDIT BY AIRLINES TO FEDERAL POLITICAL CANDIDATES

Sec.

374a.1 Purpose.
374a.2 Applicability.
374a.3 Definitions.
374a.4 Conditions governing extension of unsecured credit.
374a.5 Exemption authority.
374a.6 Reporting requirements.
374a.7 Record retention requirements.
374a.8 Prospective application of part.

Authority: Secs. 204, 401, 403, 404, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 760, 766, 771; 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1386. Sec. 401, Pub. L. 92-225, 86 Stat. 16; 2 U.S.C. 451.

Source: SPR-53, 37 FR 9388, May 10, 1972, unless otherwise noted.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Pub. L. 92-225, 86 Stat. 19, 2 U.S.C. 451, enacted February 7, 1972, and hereafter referred to as the "Election Campaign Act") directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board's responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined herein.

§ 374a.3 Definitions.

"Adequate security" means (a) a bond, issued by a surety meeting the standards prescribed for sureties in Part 380 of this chapter, in an amount not less than one hundred and fifty percent (150%) of the credit limit established by the air carrier for the candidate, or the person acting on behalf of the candidate, as the case may be, by the terms of which bond the surety undertakes to pay to the air carrier any and all amounts (not exceeding the face amount of the bond) for which the assured candidate or the assured person acting on behalf of a candidate, as the case may be, is or may become legally liable to the air carrier for transportation, as defined in this part; or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and must consist of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

"Air carrier" means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

"Candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

"Election" shall have reference to (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference for the nomination of persons for election to Federal office.

"Established credit limit" means the dollar limit of credit established by the carrier extending credit.

"Federal office" means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

"Person acting on behalf of a candidate" means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person. The term includes persons acting on behalf of more than one candidate.

"Payment in advance" means payment by cash, check, money order, or by credit card (if the issuer of such card is not an air carrier or a subsidiary, parent, or affiliate thereof) prior to performance of such transportation by an air carrier.

"Political committee" means any committee, association, corporation, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

"Transportation" means (a) the carriage of persons or property (including services connected therewith) for compensation or hire to or from any place in the United States, or (b) the lease or rental of aircraft, with or without crew.

[SPR-53, 37 FR 9388, May 10, 1972, as amended by SPR-173, 45 FR 80099, Dec. 3, 1980]

§ 374a.4 Conditions governing extension of unsecured credit.

(a) Unless adequate security is posted, or full payment in advance is made, no air carrier shall provide transportation to any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to, the following conditions:

(1) At least once a month the air carrier shall submit to each such candidate or person a statement covering all unsecured credit extended to such candidate or person, as the case may be (whether in connection with the campaign of such candidate or otherwise.)

(2) Such statements shall be mailed no later than the second business day following the last day of the billing period, covered by the statement.

(3) The amount of indebtedness shown on each such statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue.

(4)(i) Unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on his behalf in connection with the campaign of such candidate, so long as any overdue indebtedness of such candidate to such air carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part.

(ii) Unsecured credit shall not be extended by an air carrier to a person acting on behalf of a candidate, for transportation in connection with the campaign of such candidate, so long as any overdue indebtedness of such person to such carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such person to any other air carrier remains unpaid, in whole or in part.

(5)(i) With respect to transportation in connection with the campaign of any candidate to be performed after June 1, 1972, unsecured credit shall not be extended by an air carrier to any person acting on behalf of such candidate unless the carrier is authorized in writing by such candidate to extend such credit. The foregoing sentence shall not be construed as requiring the candidate to assume liability to the carrier for credit so extended.

(ii) Within 7 days after indebtedness becomes overdue for any unsecured credit extended by an air carrier to a person acting on behalf of a candidate in accordance with paragraph (a)(5)(i) of this section, the carrier shall notify the candidate in writing of the amount of the overdue indebtedness, and, unless paid in full within 25 days after the date of such notice, the overdue indebtedness shall be deemed to be the overdue indebtedness of the candidate, for the purposes of paragraph (b)(4)(i) of this section.

(b) It shall be presumed that a candidate or person acting on behalf of a candidate intends to use transportation in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(Secs. 204, 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377. Sec. 401 of the Federal Election Campaign Act of 1971, 86 Stat. 19 2 U.S.C. 451)

[SPR-53, 37 FR 9388, May 10, 1972, as amended by SPR-169, 45 FR 25796, Apr. 16, 1980; SPR-172, 45 FR 53454, Aug. 12, 1980]

§ 374a.5 Exemption authority.

Air carriers are exempt from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended: (a) Section 403, (b) section 404(b), and any and all other provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the provisions of this part.

§ 374a.6 Reporting requirements.

(a) Air carriers shall make monthly reports to the Board with respect to the credit for transportation furnished to candidates, or persons acting on behalf of candidates, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. After that 6-month period, air carriers shall file such a report with the Board not later than the 20th day following the end of the calendar month in which the election or nomination takes place, and thereafter when any change occurs in that report, until a negative report is filed showing that no debt for such extension of credit is owed to the carrier.

(b)(1) A separate report shall be filed for each candidate with an aggregate indebtedness balance of over $5,000 on the last day of the month to which the report pertains. The report shall cover all debts incurred by the candidate, whether or not incurred in connection with his campaign, and all debts incurred by persons acting on his behalf in connection with such campaign. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate; and it shall be presumed that the transportation for which the indebtedness has been incurred is intended to be used in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(2) The reports required by this paragraph (b) shall be filed with the Board's Bureau of Accounts and Statistics not later than the 20th day fol-

lowing the end of the calendar month to which the report pertains. They shall include the following data: (i) Name of account; (ii) the credit limit established for such account; (iii) the balance, if any, of the amount payable for transportation not paid for in advance; (iv) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (v) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(3) The report required by this paragraph (b) shall be in the form attached hereto as Appendix A.[1]

(c) A separate report shall be filed for each person acting on behalf of any candidate, if the aggregate indebtedness balance of such person to the reporting air carrier (including all debts incurred by such person, whether or not incurred in connection with the campaign of a candidate, as defined in this part) is over $5,000 on the last day of the month to which the report pertains. The report shall be filed with the Board's Bureau of Accounts and Statistics not later than the 20th day following the end of the calendar month to which the report pertains and shall include (1) the credit limitation established for such person; (2) the balance, if any, of the amount payable for transportation not paid for in advance; (3) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (4) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

[SPR-53, 37 FR 9388, May 10, 1982, as amended by SPR-190, 47 FR 32414, July 27, 1982]

§ 374a.7 Record retention requirements.

(a) Every air carrier subject to the part shall retain for 2 years after a Federal election true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect the furnishing of transportation to a candidate for political office or a person acting on his behalf;

(2) All statements, invoices, bills, and receipts with respect to the furnishing of such transportation referred to in paragraph (a)(1) of this section.

(b) Every air carrier shall make the documents listed in this section available in the United States upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

§ 374a.8 Prospective application of part.

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date but which are unpaid as of the effective date of this part. The provisions of this part will be applicable, however, to all credit transactions which occur subsequent to the effective date of the part even though the credit account in which the transaction takes place was opened prior to the effective date of the part.

PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

Subpart A—General

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AUTHORITY: Secs. 204(a) and 1108(b) of the Federal Aviation Act of 1958; 72 Stat. 743, 798, 49 U.S.C. 1324, 1508, unless otherwise noted.

SOURCE: SPR-4, 25 FR 2790, Apr. 2, 1960, unless otherwise noted.

Subpart A—General

§ 375.1 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958;

"Administrator" shall mean the Administrator of the Federal Aviation Agency;

"Air transportation" means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in interstate, overseas, or foreign commerce (see section 101(10) and (21) of the Federal Aviation Act, 49 U.S.C. 1301);

"Category" shall indicate a classification of aircraft such as airplane, helicopter, glider, etc.;

"Commercial air operations" shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under section 402 of the Act and all other operations in air transportation.

"Foreign air carrier permit" means a permit authorizing foreign air transportation by a foreign air carrier pursuant to section 402 of the Act;

"Foreign aircraft permit" means a permit authorizing navigation of an aircraft of foreign registry, not a part of the armed forces of a foreign nation, in the United States pursuant to section 1108(b) of the Act;

"Foreign civil aircraft" means an aircraft of foreign registry which is not part of the armed forces of a foreign nation;

"Type" means all aircraft of the same basic design including all modifications thereto except those modifications which result in a change in handling or flight characteristics; and

"Terms defined in section 101 of the Act" have the meaning expressed in such definitions.

§ 375.2 Applicability.

The provisions of this part regulate the admission to, and navigation in, the United States of foreign civil aircraft other than aircraft operated by holders of foreign air carrier permits issued by the Board pursuant to section 402 of the Act under the authority of such permits. This part also contains provisions which specify the extent to which certain classes of flight operations by foreign civil aircraft may be conducted, and the terms and conditions applicable to such operations. Nothing in this part shall authorize any foreign aircraft to engage in air transportation nor be deemed to provide for such authorization to be issued by the Board.

§ 375.3 Existing permits.

Permits issued by the Board under the provisions of former Part 190 of the Civil Air Regulations shall continue in effect in accordance with their terms until their expiration date unless sooner terminated or revoked by the Board.

Subpart B—Authorization

§ 375.10 Certain foreign civil aircraft registered in ICAO member states.

Subject to the observance of the applicable rules, conditions, and limitations set forth in this part:

(a) Foreign civil aircraft manufactured in a State which at the time of manufacture was a member of the International Civil Aviation Organization (ICAO) and registered in a State which at the time of flight is a member of ICAO may be navigated in the United States;

(b) Foreign civil aircraft manufactured in a State which at the time of manufacture was not a member of ICAO and registered in a State which at the time of flight is a member of ICAO may be navigated in the United States (1) if the State of registry has notified ICAO that the requirements under which it issues or renders valid certificates of airworthiness, are equal to or above the minimum standards established pursuant to the Chicago Convention, or (2) if such notification has not been made to ICAO at the time of flight, there is on file with the Board a statement by the State of registry that with regard to aircraft of the type which is proposed to be operated hereunder the requirements under which certificates of airworthiness are issued or rendered valid are equal to or above the minimum standards established pursuant to the Chicago Convention. Such statement shall be filed with the Board through diplomatic channels.

[SPR-24, 33 FR 9337, June 26, 1968]

§ 375.11 Other foreign civil aircraft.

Foreign civil aircraft other than those referred to in § 375.10 may be navigated in the United States only when so authorized by the Board under the provisions of Subpart G of this part.

[SPR-24, 33 FR 9337, June 26, 1968]

Subpart C—Rules Generally Applicable

§ 375.20 Airworthiness and registration certificates.

Foreign civil aircraft shall carry aboard currently effective certificates of registration and airworthiness issued or rendered valid by the country of registry and shall display the nationality and registration markings of that country: *Provided*, That in the cases of operations specified in paragraphs (a) through (f) of this section, an unexpired air safety flight authorization issued by the Administrator, his designee or duly authorized representative, under Title VI of the Act, authorizing and circumscribing such operations, may be carried on board the aircraft in lieu of such certificate of airworthiness:

(a) It has been determined by the country of registry that the aircraft has been damaged to the extent that the airworthiness certificate is invalidated and the aircraft is to be flown to a place where repairs or alterations are to be made;

(b) The certificate of airworthiness issued for the aircraft has been invalidated by the country of registry due to a change in nationality and such aircraft is intended to be navigated in the United States in transit to the new country of registry; or

(c) Title to an aircraft of United States manufacture for which no certificate of airworthiness has theretofore been issued has passed to a foreign buyer or buyers and the aircraft is to be navigated in the United States for the purpose of:

(1) Flight testing such aircraft; or

(2) Giving indoctrination training in the operation of the aircraft to the buyer or his employees or designees; or

(3) A ferry flight for the purpose of making an export delivery out of the United States.

Aircraft of United States manufacture may be operated for the purposes stated in this paragraph even though no registration certificate has been issued by the country of the foreign buyer or buyers: *Provided,* That the markings displayed by such aircraft are identified in the flight authorization issued for operation thereof by the administrator.

(d) A foreign civil aircraft of United States or foreign manufacture is brought to the United States for alterations which invalidate its foreign airworthiness certificate where such aircraft is to be navigated in the United States for the purpose of:

(1) Flight testing such aircraft; or

(2) Giving indoctrination training in the operation of the altered aircraft to the owner or his employees or designees; or

(3) A ferry flight for the purpose of making an export delivery out of the United States.

(e) A foreign civil aircraft is brought to the United States for the purpose of demonstration or test of the whole or any part thereof.

(f) A Canadian registered amateur-built experimental aircraft is to be publicly demonstrated at an air show within the United States.

[SPR-4, 25 FR 2790, Apr. 2, 1960, as amended by SPR-6, 26 FR 833, Jan. 27, 1961; SPR-10, 29 FR 3470, Mar. 18, 1964; SPR-27, 33 FR 12834, Sept. 11, 1968]

§ 375.21 Airmen.

Each member of the flight crew of a foreign civil aircraft shall have in his personal possession a valid airman certificate or license authorizing him to perform his assigned functions in the aircraft and for the operation involved issued or rendered valid by the country of registry of the aircraft or by the United States. No such flight crew member shall perform any flight duty within the United States which he is not currently authorized to perform in the country issuing or validating the certificate.

§ 375.22 Flight operations.

Flight of foreign civil aircraft in the United States shall be conducted in accordance with the currently applicable regulations of the Administrator of the Federal Aviation Agency.

§ 375.23 Maximum allowable weights.

Foreign civil aircraft which are permitted to navigate in the United States on the basis of foreign airworthiness certificates shall not be operated in the United States except in accordance with the limitations on maximum certificated weights prescribed or authorized for the particular variation of the type and for the particular category of use, by the country of manufacture of the aircraft type involved.

§ 375.24 Entry and clearance regulations.

All applicable entry and clearance requirements for aircraft, passengers, crews, baggage and cargo shall be followed.

§ 375.25 Unauthorized operations.

Foreign civil aircraft which are not authorized to be navigated pursuant to Subpart B in combination with Subparts D or E of this part shall not be navigated in the United States. Commercial air operations shall not be undertaken without a permit issued therefor by the Board.

§ 375.26 Waiver of sovereign immunity.

By navigating a foreign civil aircraft in the United States pursuant to authorization granted by or under this part, the owners and operators of such aircraft when engaged in proprietary or commercial activities waive any right they may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against any of them in any court or other tribunal in the United States, based upon any claim arising out of operations by such persons pursuant to such authorization.

[SPR-10, 29 FR 3470, Mar. 18, 1964]

Subpart D—Operations Authorized by Regulation

§ 375.30 Operations other than commercial air operations.

Foreign civil aircraft which are not engaged in commercial air operations into, out of, or within the United States may be operated in the United States and may discharge, take on, or carry between points in the United States any nonrevenue traffic.

§ 375.31 Demonstration flights of foreign aircraft.

Flights of foreign civil aircraft within the United States may be made for the purpose of demonstration of the aircraft or any component thereof, provided no persons, cargo or mail are carried for remuneration or hire.

§ 375.32 Flights incidental to agricultural and industrial operations outside the United States.

Foreign civil aircraft which are engaged in agricultural or industrial operations to be performed wholly without the United States may be navigated into, out of, and within the United States in connection therewith provided they are not at the time engaged in the carriage of passengers, cargo or mail for remuneration or hire.

§ 375.33 Transit flights, irregular operations.

(a) Foreign civil aircraft carrying passengers, property or mail for remuneration or hire but not engaged in scheduled international air services, are authorized to navigate non-stop across the territory of the United States and to make stops for non-traffic purposes.

(b) "Stops for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail or for other than strictly operational purposes. The navigation of foreign civil aircraft in the United States is not authorized under this section when the elapsed time between landing and takeoff at a stop in the United States exceeds 24 hours and passengers are permitted to leave the airport or when passengers, property or mail are transferred to another aircraft: *Provided*, That flights involving stops under such circumstances may be performed in the case of emergency relating to the safety of the aircraft, passengers, cargo or crew.

[SPR-10, 29 FR 3471, Mar. 18, 1964]

§ 375.34 Indoctrination training.

Foreign civil aircraft may be operated in the United States for the purpose of giving indoctrination training in the operation of the aircraft concerned to a buyer or his employees or designees; *Provided*, That foreign civil aircraft shall not be used within the United States for the purpose of flight instruction for remuneration or hire.

§ 375.35 Free transportation.

(a) Foreign civil aircraft may be navigated in the United States by a foreign air carrier for the transportation of persons and property specified in paragraph (b) of this section over the following non-traffic segments provided such transportation is not for compensation or hire:

(1) Between two or more points in the United States named in the carrier's permit issued under section 402 of the Act;

(2) Between a point in the United States named in the carrier's section 402 permit, and a point outside the United States not named in the permit, when authorized in accordance with the provisions of Part 216 of this chapter to carry blind sector traffic to or from such unnamed foreign point; and

(3) Between a point in the United States and a point outside thereof when the carrier lands at the United States point for non-traffic purposes in exercise of the privilege granted under the International Air Services Transit Agreement.

(b) Free transportation may be provided under this section for the following categories of persons and property:

(1) Directors, officers and employees, and their parents and immediate families, of the foreign air carrier operating the aircraft;

(2) Directors, officers and employees, and their parents and immediate families, or an air carrier or another

foreign air carrier traveling pursuant to pass interchange arrangement;

(3) Witnesses and attorneys attending any legal investigation in which any such foreign air carrier is involved;

(4) Persons injured in aircraft accidents and physicians and nurses attending such persons; and

(5) Any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

(c) A charge reasonably related to the value of meals and beverages furnished enroute shall not be deemed to constitute compensation or hire for purposes of this section.

[SPR-10, 29 FR 3471, Mar. 18, 1964, as amended by SPR-20, 33 FR 698, Jan. 19, 1968]

Subpart E—Operations Requiring Specific Pre-Flight Authorization or Filing

§ 375.40 Permits for commercial air operations.

(a) *Applications.* Commercial air operations in the United States may not be undertaken by foreign civil aircraft unless the Board has issued a permit therefor upon application pursuant to this subpart and such permit is carried on board the aircraft. Permits are not transferable. Applications for permits may be filed directly with the Board and need not be filed through diplomatic channels. They shall be made on CAB Form 272, addressed to the attention of the Director, Bureau of International Aviation, and shall contain a proper identification of the applicant, the operator of the aircraft concerned and of the owner thereof, a description of the aircraft by make, model, and registration marks; and a full description of the operations for which authority is desired, indicating type and dates of operations and number of flights, and routing. In case of cargo flights, the names of all contractors and the beneficial owner of the cargo, a description of the cargo and of the proposed operations, including services to be performed by any exporter, importer or transportation agent, shall be provided. In case of passenger flights, a full identification and description of the group chartering the aircraft, and identification of the travel agent, if any, shall be provided. A copy of any newspaper or other advertising of the flights shall be enclosed. The application shall also be accompanied by such documents as may be necessary to establish that reciprocity for similar operations by United States registered aircraft exists in the country of registration of the aircraft. Applications shall be submitted at least 15 days in advance of the date of the commencement of the proposed operation. Such additional information as may be specifically requested by the Board shall also be furnished.

(b) *Withholding from publication.* Except to the extent that the Board directs that such information be withheld from public disclosure for reasons of national defense or as hereinafter specified in this paragraph, every application, and any objection thereto filed pursuant to this section shall be open to public inspection, and notice thereof shall be published in the Board's Weekly List of Applications Filed. Any person may make written objection to the Board to the public disclosure of such information or any part thereof, stating the grounds for such objection. If the Board finds that a disclosure of such information or part thereof would adversely affect the interests of such person and is not required in the interest of the public, it will order that such information or part be so withheld.

(c) *Failure to comply.* Failure to comply with the requirements of this part shall be cause for the suspension, revocation or refusal to renew a permit or the denial of the issuance of a new permit issuable under this part.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note))

[SPR-4, 25 FR 2790, Apr. 2, 1960, as amended by SPR-83, 40 FR 23070, May 28, 1975; SPR-148, 43 FR 34119, Aug. 3, 1978]

§ 375.41 Agricultural and industrial operations within the United States.

Foreign civil aircraft shall not be used for crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting or similar agricultural or industrial operations within the United States unless a permit therefor has been issued by the Board and the operation is conducted in accordance with all applicable State and local laws and regulations as well as the applicable provisions of this part.

§ 375.42 Commercial transport operations.

(a) *Permit required.* Except for aircraft being operated under a permit issued by the Board pursuant to section 402 of the Act, foreign civil aircraft engaged in flights for remuneration or hire for the purpose of discharging or taking on passengers or cargo at one or more points in the United States may be navigated in the United States only if there is carried on board the aircraft a permit issued by the Board in accordance with this section authorizing the operation involved. Carriage of cargo for the operator's own account is governed by the provisions of this section if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft.

(b) *Nature of privilege conferred by permit.* (1) The provisions of this section and of any permit issued hereunder, together with section 1108(b) of the Act, are designed, among other purposes, to carry out the international undertakings of the United States in the Chicago Convention, in particular Article 5 thereof. That article accords to foreign aircraft the privilege of "taking on or discharging passengers, cargo or mail" subject to the right of the state where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. The Congress by the 1953 amendment to section 6 of the Air Commerce Act of 1926, now designated as section 1108(b) of the Act, has authorized the Board to permit such operations only where conditions of reciprocity and the interest of the public in the United States are met. It is incompatible with the intent of this legislation and the nature of the function involved to regard the operator of any foreign registered aircraft as entitled as a matter of right to the issuance, renewal of freedom from modification or change in a permit issuable pursuant to this authority. Accordingly, any permit issued under this part may be withheld, revoked, amended, modified, restricted, suspended, withdrawn, or canceled by the Board in the interest of the public of the United States, without notice or hearing and without the right in the holder to challenge the Board's discretion.

(2) Aircraft cannot be authorized to engage in air transportation under this section. The question of whether particular flights for which a permit is sought will be in common carriage, and therefore in air transportation, is one of fact to be determined in the light of all the facts and circumstances surrounding the applicant's entire operations. The burden rests upon the applicant in each instance to demonstrate by an appropriate factual showing that the contemplated operation will not constitute common carriage from, to or within the United States. In general, a carrier who holds himself out to the public, or to particular classes or segments thereof, as willing to furnish transportation for hire is a common carrier. Ordinarily, therefore, the type of application which may be approved hereunder is not one which may be advertised to the public.

(3) Subject to the provisions of this part, an applicant may be issued a permit authorizing one or the other of the following two types of commercial transport operations, but not both:

(i) *Occasional plane-load charters.* Occasional plane-load charters may be authorized where, because of their limited nature and extent, special equipment or facilities utilized, or other circumstances pertaining to them, it appears that they are not within the scope of the applicant's normal holding out of transportation services to the general public. Such charters are normally limited to those in which the entire capacity of the aircraft is engaged by a single charterer, and since they are occasional in nature, should not exceed for any one applicant more than six flights during a year's period. Applicants are required to make full disclosure concerning the identity and business of the charterer. Generally speaking, the kinds of so-called charters that will not be authorized under this regulation are those that involve solicitation of the general public such as is usually involved in the transportation of individually ticketed passengers or individually waybilled cargo, or in which the charterer is a travel agent, a broker, an air freight forwarder or any other organization that holds itself out to the general public to provide transportation services.

(ii) *Continuing cargo operations for one or more contractors.* (*a*) Continuing cargo operations for one or more contractors may be permitted where it has been established by the applicant that the proposed operation is not within the scope of the applicant's normal holding out of transportation services to the general public. Authorizations of this type to serve up to 10 different contractors during any 12-month period may be granted unless other facts and circumstances impose a more stringent limitation, and provided that there is no rapid turnover of contractors.

(*b*) The provisions of the contract between the applicant and the contractor are important. The type of contract most likely to qualify for authorization hereunder is one which meets the following conditions; (*1*) The contract provides for continuing operations over a period of six months or longer; (*2*) the contract calls for an absolute or minimum number of flights, or for an absolute or minimum volume of cargo to be transported; and (*3*) the shipper guarantees to the carrier the specified number of flights or the specified volume of cargo, or the specified minimum number of flights or the specified minimum volume of cargo, and agrees to pay for that capacity whether or not used.

(*c*) Also, the nature of the business activities of the particular contractor will be carefully considered by the Board. As in the case of plane-load charters, the proposed operations will not be authorized if the contractors are air freight forwarders, cargo agents, brokers or others who hold themselves out to the general public to provide transportation services. Contracts involving industrial organizations which consume the shipments in the course of their industrial operations will normally be an acceptable form of contracting organization. On the other hand, a contracting organization which does not so consume the shipped cargo, but delivers it to the ultimate consumer, directly or indirectly, may well be unacceptable as a contracting organization unless it can be shown that the ultimate consumers do not constitute the general public. In the latter type of case, the information furnished concerning the nature of the business activities of the contractor and the manner in which the ultimate consumers are solicited, served, and billed will be of particular significance.

(*d*) In the case of transportation of goods for the carrier's own account for subsequent sale, such operations will not be permitted where the carrier solicits orders and delivers goods, maintaining title to the goods principally for the purpose of engaging in the transportation business or where the arrangement otherwise is in the nature of a subterfuge.

(iii) *Reports of unused authority.* All foreign operators of occasional plane-load charters for which authority is granted must notify the Board, in writing, not later than 15 days after the expiration of their permit of their failure to use this authority. All foreign operators of continuing cargo operations must notify the Board, in writing, not later than 30 days after starting operations, and every 30 days thereafter, of failure to use any part of the authority. The unused authority shall otherwise be deemed to have been exercised.

(c) *Application for permit.* Applications for permits under this section shall comply with the requirements of § 375.40. There shall be enclosed with the application a copy of each contract between the operator and each person for whose account the flight or flights is or are to be performed. If any flight is to be performed in whole or in part for the operator's own account under the circumstances governed by this section, there shall also be enclosed copies of all contracts relating to the acquisition and disposition of the cargo. Copies of contracts covering proposed operations which have previously been filed with the Board in connection with a prior application need not be filed again.

(d) *Issuance of permit.* If upon examination of the application, all supporting documents, and other information available to it, the Board is of the opinion that the application is in order and that the proposed operation either by itself or in conjunction with other operations of the operator to or from the United States is in the interest of the public and does not disclose any apparent violation of section 402 of the Act, or any other applicable provision of law, it will issue a permit for a period not in excess of 90 days to the applicant authorizing the conduct of the flights set forth in the application: *Provided,* That the maximum number of flights or volume of cargo that will be authorized pursuant to each contract for continuing cargo operations will not exceed the minimum specified therein by more than 20 percent, if the contract specifies a minimum and a maximum.

[SPR-4, 25 FR 2790, Apr. 2, 1960, as amended, SPR-11, 29 FR 8002, June 24, 1964; SPR-185, 47 FR 12950, Mar. 26, 1982]

§ 375.43 Keeping of records on commercial transport operations.

(a) *Cargo documents.* The holder of a permit for cargo operations issued under § 375.42 shall issue a manifest or shipping document with respect to each shipment which shall contain, but need not be limited to, the following information:

(1) Name of the contractor for whom the shipment is transported.

(2) Name and address of payer of transportation charges.

(3) Name and address of vendor of goods.

(4) Name and address of consignor of goods.

(5) Name and address of consignor's agent, if any.

(6) Names and addresses of intermediate and ultimate consignees.

(7) Number of packages in shipment and total weight of same.

(8) Description of commodities.

(9) Point of air origin and air destination of shipment on line of carrier.

(10) Date of airwaybill preparation.

(11) Name of employee or agent preparing airwaybill.

(12) Date shipment is transported by carrier.

(13) Breakdown of charges including weight-rate charges, pick-up and delivery, excess valuation, advance charges and any accessorial charges.

(b) [Reserved]

(c) *Contents of documents for passenger flights.* The holder of a permit for passenger charters originating or terminating in the United States issued under § 375.42 shall require each charterer to file with it prior to flight a list of the names and addresses of all passengers to be transported on each flight.

(The recordkeeping requirements contrained in paragraph (c) were approved by the Office of Management and Budget under control number 3024-0031.)

[SPR-4, 25 FR 2790, Apr. 2, 1960, as amended by SPR-29, 34 FR 5254, Mar. 14, 1969; SPR-174, 46 FR 25419, May 6, 1981; SPR-181, 46 FR 63222, Dec. 31, 1981; 47 FR 39474, Sept. 8, 1982]

§ 375.44 [Reserved]

§ 375.45 Transit flights; scheduled international air service operations.

(a) *Requirement of notice.* Scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States may not be undertaken by foreign civil aircraft unless the operator[3] of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 15 days prior to the date of commencement of such service, filed a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement in accordance with the provisions of paragraphs (b) and (c) of this section.

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[3] Any person leasing an aircraft with crew is considered to be an operator of such aircraft. See 14 CFR Part 218.

(b) *Filing of the notice.* An original and two copies of the Notice shall be filed with the Director, Bureau of International Aviation, Civil Aeronautics Board. Copies of the Notice shall be served upon the Department of State and the Administrator, Federal Aviation Administration. The filing date shall be the date of actual receipt by the Board.

(c) *Content of notice.* A "Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement" shall be clearly labled as such, and as a minimum shall set forth, with whatever detail may be necessary, the following information:

(1) The name, country of organization, and nationality of all ownership and control interests, of the operator; and, if other than the operator, of the carrier offering the services to the public. If any interest (direct or indirect) in the operator or offeror of services is held by nationals of a country other than the country of organization or citizenship, the nature and extent of such interest must be fully disclosed. If any officer or director of the operator or carrier offering the services is a national of a country other than the country of organization or citizenship, the position and duties of such officer or director, and his relevant position in relation to other officers and directors must similarly be fully disclosed.

(2) The State of registration of the aircraft proposed to be operated.

(3) A full description of the proposed operations including the type of operations (passenger, property, mail, or combination), date of commencement, duration and frequency of flights, and routing (including each terminal and intermediate point to be served).

(4) A statement as to whether or not any advertisement or publication of the proposed operations has been made in the United States. If there has been any advertisement or publication of the operations in the United States, copies of all such advertisements or publications should be included.

Any change with respect to these matters (minor changes in schedules or routing excepted), shall also be filed with the Board's Bureau of Operating Rights.

(d) *Authorized operations.* If the operator and the carrier offering services to the public (if different from the operator) have filed a "Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement," at least 15 days before the date of commencement of the proposed operations in accordance with paragraphs (a), (b) and (c) of this section, the described operations may be commenced and performed without further authorization from the Board, unless or until the Board issues an order notifying the operator and/or the carrier offering the services to the public that, considering the matters submitted in the Notice, the Board is of the view that a question may exist as to whether (1) the proposed services are authorized pursuant to the terms of the International Air Services Transit Agreement; (2) substantial ownership and effective control are vested in nationals of a State party to the International Air Services Transit Agreement; (3) the proposed operations will be in compliance with the laws of the United States, the Board's Regulations, or the provisions of this section; or (4) the operator or its government have performed their obligations under the International Air Services Transit Agreement.

(e) *Prohibited operations.* If the Board issues an order of notification as described in paragraph (d) of this section, neither the operator, nor the carrier offering the services to the public, shall commence the proposed operations, or, except as may be otherwise specified in the order, operate any flights subsequent to receipt of the order, unless or until the Board issues a Foreign Aircraft Permit pursuant to the provisions of section 1108(b) of the Act specifically authorizing such operations.

(f) *Foreign Aircraft Permit—application and procedures.* If the Board issues an Order of Notification as described in paragraph (d) of this section, the carriers' Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement shall be treated as an application for the required Foreign Aircraft

Permit, and further procedures on such application shall be as directed by the Board.

(g) *Short notice filing.* Nothing in this section shall be construed as precluding the filing of an application for a Foreign Aircraft Permit to perform transit operations pursuant to the International Air Services Transit Agreement less than 15 days in advance of the proposed operation; *Provided:* That, no such flights shall be operated unless or until a specific Foreign Aircraft Permit authorization has been issued by the Board.

(h) *Nature of privilege conferred.* Air transportation is not authorized under this section, and the burden rests upon each operator and carrier to show that the contemplated operations will not constitute air transportation within the meaning of the Federal Aviation Act. In addition, each operator and carrier has the burden of demonstrating that the proposed operations are authorized pursuant to the International Air Services Transit Agreement, and that the appropriate authorization should not be withheld pursuant to section 5 of Article I thereof. Stopovers for the convenience or pleasure of the passengers are not authorized under this section and stops other than for strictly operations reasons shall not be made. The consolidation on the same aircraft of an operation under this section with a service authorized under section 402 of the Act is not authorized by this section. Any authorization or permit granted by this section is nontransferable, and may be withheld, revoked, suspended, withdrawn, or cancelled by the Board, without notice or hearing, if required by the public interest. Operators of aircraft registered in countries not parties to the International Air Services Transit Agreement shall make special application to the Board under § 375.70.

(Approved by the Office of Management and Budget under control number 3024-0031)

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note))

[SPR-129, 42 FR 36817, July 18, 1977, as amended by SPR-157, 44 FR 21768, Apr. 12, 1979; SPR-181, 46 FR 63222, Dec. 31, 1981; 47 FR 39474, Sept. 8, 1982]

Subpart F—Penalties

§ 375.60 Penalties.

The operation of a foreign aircraft within the United States in violation of the provisions of this part constitutes a violation of section 501 of the Act, and may, in addition, constitute a violation of the Civil Air Regulations. Such operation makes the person or persons responsible for the violation or violations subject to a civil penalty as provided in section 901 of the Act, and to the alteration, amendment, modification, suspension or revocation of any permit issued under this part and of any United States certificate involved as provided in section 609 of the Act. Engaging in air transportation as defined in the aforesaid Act by a foreign aircraft without a foreign air carrier permit issued pursuant to section 402 of the Act or in violation of the terms of such a permit constitutes not only a violation of this regulation but of Title IV of the Act as well, which entails a criminal penalty as set forth in section 902 of the Act.

Subpart G—Special Authorization

§ 375.70 Special authorization.

Any person desiring to navigate a foreign civil aircraft within the United States otherwise than as specifically provided in this part may petition the Board for authorization authorizing the particular flight or series of flights. Such authorization may be issued only if the Board finds that the proposed operation is fully consistent with the applicable law and is in the interest of the public of the United States.

(Approved by the Office of Management and Budget under control number 3024-0031)

[SPR-4, 25 FR 2790, Apr. 2, 1960, as amended by SPR-6, 26 FR 834, Jan. 27, 1961; SPR-181, 46 FR 63222, Dec. 31, 1981; 47 FR 39474, Sept. 8, 1982]

PART 377—CONTINUANCE OF EXPIRED AUTHORIZATIONS BY OPERATION OF LAW PENDING FINAL DETERMINATION OF APPLICATIONS FOR RENEWAL THEREOF

Subpart A—General Provisions

Sec.
377.1 Definitions.
377.2 Applicability of part.
377.3 Authorizations not covered by 5 U.S.C. 558(c).
377.4 Certain authorizations with alternative termination dates.
377.5 Procedure to obtain Board interpretation.

Subpart B—Renewal Applications and Procedure Thereon

377.10 Requirements for, and effect of, renewal applications.
377.11 Processing of defective renewal applications.

AUTHORITY: Secs. 204, 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 788; (49 U.S.C. 1324, 1481; 5 U.S.C. 558, 559).

Subpart A—General Provisions

§ 377.1 Definitions.

As used in this part:

"Authorization" means any agency certificate, approval, statutory exemption or other form of permission granted pursuant to sections 101(3), 401, 402, 408, 409, 412 and 416 of the Federal Aviation Act of 1958, as amended. Where any operating authorization creates more than one separate route, each of these shall be deemed a separate authorization for the purposes of this part.

"Renewal application" means any application filed in conformity with the requirements of this part which requests either a renewal or a new license and is intended to invoke the provisions of the last sentence of 5 U.S.C. 558(c).

"Route" means an authorization which permits an air carrier to render unlimited regularly scheduled service between a specifically designated pair of terminal points and intermediate points, if any.

[SPR-84, 40 FR 24998, June 12, 1975, as amended by SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.2 Applicability of part.

(a) This part implements the last sentence of 5 U.S.C. 558(c) with regard to temporary authorizations granted by the Board.

NOTE: The last sentence of 5 U.S.C. 558(c) provides: "When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."

(b) Nothing in this part prevents the Board from terminating at any time, in accordance with law, any authorization or any extension of an authorization.

(c) Nothing in this part constitutes a determination that any given authorization is a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c).

[SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.3 Authorizations not covered by 5 U.S.C. 558(c).

The Board hereby determines that the following authorizations are not licenses "with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c):

(a) Authorizations granted for a specified period of 180 days or less; and

(b) Authorizations, other than those granted under section 401 of the Act, that by their terms are subject to termination at an uncertain date upon the happening of an event, including fulfillment of a condition subsequent or occurrence of a contingency.

[SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.4 Certain authorizations with alternative termination dates.

Unless granted under section 401 of the Act, an authorization that by its terms is subject to termination alternatively, either at an uncertain date upon the happening of an event or upon the arrival of a specified date:

(a) Will not be considered a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c), if the event occurs before the specified date; and

(b) Ordinarily (subject to Board interpretation under § 377.5) will be considered such a license, if the event does not occur before the specified date and that date is more than 180 days after the effective date of the authorization.

[SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.5 Procedure to obtain Board interpretation.

(a) The Board will determine upon written request by the holder of a temporary authorization or by any competitively affected air carrier or foreign air carrier, or upon its own initiative, whether the temporary authorization is a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c).

(b) A written request for such a Board determination shall be filed at least 60 days before the deadline set forth in § 377.10 for a timely renewal application.

(c) The filing of such a written request shall not affect the timeliness requirements for renewal applications that are set forth in § 377.10 or any other applicable Board rule or order.

[SPR-184, 47 FR 7212, Feb. 18, 1982]

Subpart B—Renewal Applications and Procedure Thereon

§ 377.10 Requirements for, and effect of, renewal applications.

(a) *Identification of authorization covered by renewal application.* Each renewal application shall identify the authorization or authorizations to which it is intended to relate. The application shall indicate the applicant's intention to rely upon 5 U.S.C. 558(c) as implemented by this part. In case of applications for renewal of an authorization for route service, the renewal application shall specifically identify the separate routes which the applicant proposes to continue serving pursuant to the expiring authorization, pending final determination of the renewal application.

(b) *Contents of renewal application.* The application must contain all the information required by law and the Board's regulations, and meet the requirements thereof as to form. The new authorization sought need not be of the same duration as the expiring authorization. If the application relates to renewal of route authority, it must contain, as a minimum, a request for renewed authority to render route service between the terminals named in each separate route for which renewal is requested.

(c) *Timeliness.* The application must be filed and served in compliance with applicable law and the Board's regulations at least 60 days before the expiration date of the outstanding temporary authorization, except that:

(1) For certificates issued under section 401 of the Act with a specified expiration date, the deadline is 180 days before the expiration date;

(2) For certificates issued under section 401 of the Act that terminate by their terms upon the happening of an event that could not be foreseen, the deadline is 30 days after the time that the carrier has notice that the event will occur or has occurred;

(3) For foreign air carrier permits issued under section 402 of the Act and exemptions issued under section 416 to non-U.S. citizens, the deadline is the expiration date itself;

(4) For renewal by substantially equivalent certificate authority of fixed term route authorizations granted by exemption and for interim extension of the exemption, pursuant to §§ 302.909 and 399.18 of this chapter, the deadline is 90 days before the expiration date; and

(5) Nothing in this part supersedes a requirement for earlier filing contained in any law, Board rule or order, or temporary authorization.

(d) *Effect.* In the case of authorizations which constitute licenses with reference to activities of a continuing nature within the meaning of 5 U.S.C. 558(c), the filing of an application complying in all respects with the requirements of paragraphs (a) through (c) of this section shall extend the authorization to which it relates as then outstanding in its entirety, together with all applicable terms, conditions and limitations, until the application has been finally determined by the Board. In the case of routes granted under section 401 of the Act, the duty to render adequate service continues to attach to every point as provided in the expired authorization which is extended pursuant to this provision. The date of final determination of the application shall be the date when the final order determining the application takes effect, or when the applicable period for filing of petitions for rehearing, reargument or reconsideration expires, or when a timely filed petition therefor is denied, whichever occurs latest.

[SPR-84, 40 FR 24998, June 12, 1975, as amended by SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.11 Processing of defective renewal applications.

When the Board determines that a renewal application does not comply with the requirements of this part, or that it does not relate to a license with reference to an activity of a continuing nature, it will so notify the applicant. The applicant may amend his application to cure the deficiency as a matter of right at any time prior to the date when the application was due pursuant to § 377.10(c).

[SPR-84, 40 FR 24998, June 12, 1975]

PART 379—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE BOARD—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

379.1 Purpose.
379.2 Application of this part.
379.3 Discrimination prohibited.
379.4 Assurances required.
379.5 Compliance information.
379.6 Conduct of investigations.
379.7 Procedure for effecting compliance.
379.8 Hearings.
379.9 Decisions and notices.
379.10 Judicial review.
379.11 Effect on other remedies; coordination.
379.12 Definitions.

AUTHORITY: Sec. 602, 78 Stat. 252; and secs. 102, 204, 404, 406, and 1002, 72 Stat. 740, 743, 760, 763 and 788; 49 U.S.C. 1302, 1324, 1374, 1376, and 1482, unless otherwise noted.

SOURCE: 29 FR 19287, Dec. 31, 1964, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to this part appear in ER-756, 37 FR 18909, Sept. 16, 1972.

§ 379.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Civil Aeronautics Board.

§ 379.2 Application of this part.

This part applies to any program authorized to receive Federal financial assistance under a law administered by the Board, including the payment of compensation by the Board under section 406 or 419 of the Federal Aviation Act of 1958 (49 U.S.C. 1376, 1389). It applies to money paid or other Federal financial assistance extended under any such program after the effective date of this part regardless of the approval or issuance date of the Board order that established an amount of payment pursuant to an application for compensation under Part 324 of this chapter or pursuant to an application for any other Federal payment or financial assistance. This part does not apply to money paid or other assistance extended under any such program before the effective date of this regulation, or to any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 379.3(c).

(Sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1; secs. 204, 404, 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 92 Stat. 1732, 49 U.S.C. 1324, 1374, 1389)

[SPR-162, 44 FR 42175, July 19, 1979]

§ 379.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific disciminatory actions prohibited.* (1) No air carrier shall subject any person to discrimination on the ground of race, color, or national origin in connection with air transportation for which such carrier is receiving or has claimed compensation payable under section 406 or section 419 of the Federal Aviation Act of 1958.

(2) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 or this part.

(3) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which the part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Civil Rights Act of 1964.

(c) *Employment practices.* Where discrimination on the grounds of race, color, or national origin in the employment practices of the recipient under any program to which this part applies tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, then to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries, that recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees).

(Sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1; secs. 204, 404, 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 92 Stat. 1732, 49 U.S.C. 1324, 1374, 1389)

[29 FR 19287, Dec. 31, 1964, as amended by SPR-55, 38 FR 17935, July 5, 1973; SPR-167, 44 FR 74806, Dec. 18, 1979]

§ 379.4 Assurances required.

Every applicant for or recipient of Federal financial assistance to which this part applies shall, as a condition to approval of its application and/or the extension of such financial assistance, furnish with the application, or on request of the Board in the case of compensation received pursuant to an investigation instituted under section 406 of the Federal Aviation Act of 1958 by the Board or by a person other than the recipient of such compensation, an assurance that it will comply with all requirements imposed by this part. The Board's request for such assurance will normally be made at the time the application for compensation under section 419 is filed or at the time of a Board order instituting an investigation under section 406.

(Sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1; secs. 204, 404, 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 92 Stat. 1732, 49 U.S.C. 1324, 1374, 1389)

[SPR-162, 44 FR 42175, July 19, 1979]

§ 379.5 Compliance information.

(a) *Compliance reports.* Each recipient shall keep such records and submit to the Board timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Board may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part.

(b) *Access to sources of information.* Each recipient shall permit access by designated Board personnel during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part.

(c) *Information to passengers and shippers.* Each recipient shall make available to passengers, shippers, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Board finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 379.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The Board or its designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Board a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Board.

(c) *Investigations.* The Board or its designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Board or its designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 379.7.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the Board or its designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 379.7 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance of threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 379.4.* If an applicant, or recipient, or other person who has received a Board request for an assurance required under § 379.4 fails or refuses to furnish such assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Board shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such subsection except that the Board shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application or Board order therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the Board has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, and (3) the expiration of 30 days after the Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Board has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 379.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 379.7(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Board that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 379.7(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Board in Washington, D.C., at a time fixed by the Board unless it determines that the convenience of the applicant or recipient or of the Board requires that another place be selected. Hearings shall be held before the Board or, at its discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Board shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both the Board and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 379.9.

[29 FR 19287, Dec. 31, 1964, as amended by SPR-55, 38 FR 17936, July 5, 1973]

§ 379.9 Decisions and notices.

(a) *Decision by person other than the Board.* If the hearing is held by an administrative law judge, such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Board for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the administrative law judge, the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Board his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Board may on its own motion within 45 days after the initial decision serve on the applicant or recipient a notice that it will review the decision. Upon the filing of such exceptions or of such notice of review the Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the Board.

(b) *Decisions on record or review by the Board.* Whenever a record is certified to the Board for decision or it reviews the decision of an administrative law judge pursuant to paragraph (a) of this section or whenever the Board conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with the Board briefs or other written statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the applicant, or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 379.8(a), a decision shall be made by the Board on the record, and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Board shall set forth rulings on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Board that it will fully comply with this part.

(f) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the Board to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the Board determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If the Board denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Board to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the procedures set forth in § 379.8. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) shall remain in effect.

[29 FR 19287, Dec. 31, 1964, as amended by SPR-55, 38 FR 17936, July 5, 1973]

§ 379.10 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 379.11 Effect on other remedies; coordination.

(a) *Effect on other statutory remedies.* Notwithstanding the provisions of § 379.7, nothing contained in this part shall in any way abridge or alter other statutory remedies now existing for the elimination of discrimination by air carriers, but the provisions of this part are in addition to such remedies.

(b) *Effect on other regulations.* Nothing in this part shall be deemed to supersede any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(c) *Supervision and coordination.* The Board may from time to time assign to officials of the Board, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Civil Rights Act of 1964 and this part (other than responsibility for final decision as provided in § 379.9), including the achievement of effective coordination and maximum uniformity within the Board and with other departments and agencies of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Board.

[29 FR 19287, Dec. 31, 1964, as amended by SPR-55, 38 FR 17936, July 5, 1973]

§ 379.12 Definitions.

As used in this part:

(a) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States.

(b) The term "Federal financial assistance" includes grants of Federal funds under section 406 or 419 of the Federal Aviation Act.

(c) The term "recipient" means any air carrier to whom Federal financial assistance is extended or whose rate of compensation payable by the Board under section 406 of the Federal Aviation Act of 1958 is the subject of a formal Board investigation.

(d) The term "applicant" means one who submits an application required to be approved by the Board as a condition to eligibility for Federal financial assistance, including an air carrier that submits an application for subsidy payments or compensation for losses under section 419 of the Federal Aviation Act of 1958, as amended.

(Sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1; secs. 204, 404, 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 92 Stat. 1732, 49 U.S.C. 1324, 1374, 1389)

[29 FR 19287, Dec. 31, 1964, as amended by SPR-162, 44 FR 42176, July 19, 1979]

PART 380—PUBLIC CHARTERS

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AUTHORITY: 101(3), 204, 401, 402, 407, 416, and 1102, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 797 (49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1502), unless otherwise noted.

SOURCE: SPR-149, 43 FR 36604, Aug. 18, 1978, unless otherwise noted.

EDITORIAL NOTE: For an interpretation document pertaining to Part 380, see 44 FR 44149, July 27, 1979.

Subpart A—General Provisions

§ 380.1 Applicability.

This part establishes the terms and conditions governing the furnishing of Public Charters in air transportation by direct air carriers and foreign air carriers and by Public Charter operators. This part also relieves such charter operators (other than foreign charter operators) from various provisions of Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct carriers. It also contains a limited declination of exercise of jurisdiction over foreign charter operators. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires. This part also applies to old-rule charters as set forth in § 380.19.

(Secs. 101(3), 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 737, 740, 743, 758, and 771; 92 Stat. 1731, 1732; 49 U.S.C. 1301, 1302, 1324, 1373, and 1386)

[SPR-160, 44 FR 33060, June 8, 1979]

§ 380.2 Definitions.

As used in this part, unless the context otherwise requires:

"Act" means the Federal Aviation Act of 1958, as amended.

"Charter" means a Public Charter.

"Charter group" means an aggregate of persons assembled by a charter operator or a foreign charter operator for the purpose of participation on a single itinerary in a Public Charter.

"Charter operator" means a Public Charter operator.

"Charter participant" means a member of a charter group.

"Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States, of which the president and two-thirds or more of the board of directors and other managing officers are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

"Direct air carrier" means (1) an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401 of the Act, (2) an air taxi operator registered under Part 298 of this chapter, or (3) a foreign air carrier which holds a permit issued under section 402 of the Act authorizing direct air transportation.

"Educational institution" means a bona fide school or college which (1) maintains a full-time salaried faculty on a year-round basis; (2) maintains a permanent educational plant, including classrooms and a library; (3) maintains a greater enrollment of students in noncharter programs than in charter programs; (4) receives no more than 10 percent of its total revenue from payments for charter flights and related ground accommodations; (5) is empowered to grant college degrees or secondary school diplomas by the government of one of the 50 States, the District of Columbia, or a U.S. territory or possession, and offers a full course of study meeting all the requirements for such degree or diploma; and (6) is so constituted in the utilization of capital, physical plant and personnel as to be primarily engaged in the educational process when viewed against all other activities or businesses.

"Foreign charter operator" means any person not a citizen of the United States, as defined in this section (other than a direct air carrier), who is (1) engaged in the formation of groups for transportation on Public Charters which originate in a foreign country and over whom the Board has declined to exercise its jurisdiction, or (2) engaged in the formation of groups for transportation on Public Charters which originate in the United States and who either holds a permit issued under section 402 of the Act authorizing such transportation or is registered under Subpart F of this part: *Provided, however,* That with respect to §§ 380.21, 380.24, 380.25, 380.26–36 and 380.50, the definition for "foreign charter operator" is confined to the definition set forth in paragraph (2) of this definition.

"Foreign educational institution" means an educational institution located in a foreign country that is (1) empowered to grant college degrees or secondary school diplomas by the government of that foreign country, and (2) operated as a school on a year-round basis.

"Itinerary" means all the components of a charter package, as described in the prospectus, including not only the points named therein but also all hotels, and other ground accommodations and services described therein.

"Public Charter" means a one-way or round-trip charter to be performed by one or more direct air carriers, which is arranged and sponsored by a charter operator and which meets the requirements set forth in Subpart B of this part.

"Public Charter operator" means (1) any citizen of the United States, as defined in this section (other than a direct air carrier), who is authorized hereunder to engage in the formation of groups for transportation on Public Charters in accordance with the provisions of this part; or (2) a foreign charter operator.

"Round trip" refers to any round, open-jaw, or circle trip which includes an inbound flight returning to a point no more than 50 air miles from the point of origin.

"Securer" means the charter operator's surety company, if a surety bond in used, or the bank making the security agreement, if a security agreement other than a bond is used.

"Security agreement" means either a surety bond in the form set forth in Appendix A, a surety trust agreement in the form set forth in Appendix F, or an arrangement with a bank that provides protection of charter participants' funds equivalent to or greater that that provided by the bond.

"Solicitation material" includes all advertisements in print or electronic media, brochures, and any other materials prepared or distributed by or on behalf of a charter operator to solicit participation in a Public Charter.

"Super Bowl charter" means a charter that is represented by its charter operator as including tickets to the National Football League's Super Bowl game as part of its ground package.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502; secs. 101(3), 204(a), 401, 402, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, and 92 Stat. 1731; (49 U.S.C. 1301, 1324(a), 1371, 1372, and 1386))

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-156, 44 FR 12978, Mar. 9, 1979; SPR-164, 44 FR 49445, Aug. 23, 1979; SPR-165, 44 FR 51209, Aug. 31, 1979; SPR-168, 45 FR 1856, Jan. 9, 1980; SPR-171, 45 FR 46801, July 11, 1980; SPR-179, 46 FR 56607, Nov. 18, 1981]

§ 380.3 Waivers.

A waiver of any of the provisions of this part may be granted by the Board upon its own initiative, or upon the joint submission by a direct air carrier and a charter operator of a written request therefor not less than 30 days prior to the flight to which it relates, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

§ 380.4 Enforcement.

In the case of any violation of the provisions of the Act, or of this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the act before the Board or a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or to criminal penalties pursuant to the provisions of section 902 of the Act, or other lawful sanctions.

§ 380.5 Procedures for imposition of limitations and restrictions on Public Charter operations.

(a) Whenever in the opinion of the Board there are reasonable grounds to believe that the operation of Public Charters to or from any point or in any city-pair or pairs may have a detrimental effect on the public interest, the Board may, on its own initiative or in response to a petition therefor, issue an order directing all interested persons to show cause why the Board should not impose a limitation on the number of Public Charters that may be operated to or from the point or points, or in the city-pair or pairs, or should not impose other or additional restrictions on Public Charter operations in respect to the point or points or city-pair or pairs.

(b) Petitions seeking the issuance of such an order to show cause may be filed by any person. Answers to such petitions are permitted, but a failure to file an answer shall not prejudice anyone. Each such petition and any answer thereto shall conform to the requirements of § 302.3 of the Board's rules of practice. Copies of such petitions and answers shall be served on such persons as the Director, Bureau of Domestic Aviation, or, in the case of operations by foreign charter operators, the Director, Bureau of International Aviation, or their designee, shall direct.

(c) Comments in opposition to or in support of the issuance of an order as proposed in the order to show cause, and reply comments if authorized by the order to show cause, shall be filed with the Board by the date and served upon the persons specified in the order to show cause.

(d) A final order of the Board imposing such limitations or restrictions on the operation of Public Charters as the public interest may require, or, if it would not be in the public interest to impose any limitation or restriction, terminating the proceeding shall thereafter be issued: *Provided, however*, That the Board may from time to time conclude, in its discretion, that a hearing is warranted in order to best determine whether limitations or restrictions should be imposed on the operation of Public Charters to or from any point or points or in any city-pair or pairs: *And provided, further*, That in the event a hearing is ordered, the Board may impose interim limitations or restrictions, pendente lite.

(e) Notwithstanding the foregoing, when in the judgment of the Board the public interest so requires, the

Board shall by order forthwith impose a limitation on the number of Public Charters that may be operated to or from a point or points, or in a city-pair or pairs, or impose other or additional limitations and restrictions on Public Charter operations in respect to the point or points or city-pair or pairs.

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-188, 47 FR 19691, May 7, 1982]

§ 380.6 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included.

Subpart B—General Conditions and Limitations

§ 380.10 Public Charter general requirements.

Public Charters under this part shall meet the following requirements:

(a) [Reserved]

(b) The charter contract must be for 20 or more seats.

(c) If the charter is on a round-trip basis, the departing flight and returning flight need not be performed by the same direct air carrier.

(d) The air transportation portion of the charter must be performed by direct air carriers that hold authority under section 401, 402 or 416 of the Act, or are operating under Part 298 of this chapter, except that only U.S. citizen direct air carriers may provide air transportation for operations in interstate and overseas air transportation.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, 1102, Pub. L. 85-726, as amended, 72 Stat. 743, 757, 771, 788; 49 U.S.C. 1324, 1372, 1386, 1481, 1482)

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-166, 44 FR 50832, Aug. 30, 1979; SPR-178, 46 FR 52598, Oct. 27, 1981; SPR-182, 47 FR 140, Jan. 5, 1982; SPR-188, 47 FR 19691, May 7, 1982]

§ 380.11 Payment to direct air carrier(s).

Except for air taxis, which are governed by § 298.38 of this chapter, the direct air carrier(s) shall be paid in full for the cost of the charter transportation (for both legs, if a round-trip charter) prior to the scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carrier(s) under Parts 207, 208, 212, and 214 of this chapter, as the case may be.

[SPR-164, 44 FR 49445, Aug. 23, 1979]

§ 380.12 Cancellation by charter operator and notice to participants.

(a) The charter operator may not cancel a charter for any reason (including insufficient participation), except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of departure of the outbound trip.

(b) If the carrier operator cancels a charter 10 or more days before the scheduled date of departure, the operator must so notify each participant in writing within 7 days after the cancellation but in any event not less than 10 days before the scheduled departure date of the outbound trip. If a charter is canceled less than 10 days before scheduled departure (*i.e.*, for circumstances that make it physically impossible to perform the charter trip), the operator must get the message to each participant as soon as possible.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-156, 44 FR 12978, Mar. 9, 1979]

§ 380.13 Prohibition on sale of round trips with open returns.

The charter operator shall not accept any participant's payment for return transportation unless the participant has specified a particular return flight.

§ 380.14 Unused space.

Nothing contained in this part shall preclude a charter operator from utilizing any unused space on an aircraft chartered by it for a Public Charter for the transportation, on a free or reduced basis, of such charter operator's employees, directors, and officers, and parents and immediate families of such persons, subject to the provisions of Part 223 of this chapter.

§ 380.15 Substitution for charter participants.

Substitutes may be arranged for charter participants at any time preceding departure. Participants who provide the charter operator or its sales agent with a substitute participant, or who are substituted for by a participant found by the operator, shall receive a refund of all moneys paid to the operator, except that the operator may reserve the right to retain an administrative fee not to exceed $25 for effecting the substitution.

§ 380.17 Charters conducted by educational institutions.

(a) This section shall apply only to charters conducted by educational institutions for charter groups comprised of bona fide participants in a formal academic course of study abroad which is of at least 4 weeks duration. The charter group may also include a student participant's immediate family (household members who are either married to or minor dependents of the student participant). Except as modified below, all terms and conditions of this part applicable to the operation of Public Charters shall apply to charters conducted by educational institutions.

(b) An educational institution conducting such a charter shall submit to the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a statement, signed by its president, certifying that it meets the definition of "educational institution" set forth in § 380.2.

(c) An educational institution conducting such a charter need not comply with the requirements of §§ 380.25, 380.26, 380.34, and 380.35.

§ 380.18 Charters for special events.

(a) This section shall apply to charters that cannot reasonably be organized sufficiently far in advance of the date of a special event to be operated in compliance with § 380.25 of this part. "Special event" means a significant specific event, including events of a sporting, social, religious, educational, cultural, or political nature, and is not sponsored by a direct air carrier. In determining whether any given event shall be considered a special event for purposes of this section, the Board will consider, along with other relevant factors, how long in advance of the date of the event it was publicly known, the participants could be ascertained, and its significance became publicly recognized.

(b) Except as modified by paragraphs (c), (d), and (e) of this section, all terms and conditions of this part applicable to the operation of Public Charters shall apply to operations under this section.

(c) The charter operator shall include with its prospectus a description of the event, including information necessary to determine the eligibility of the event.

(d) The charter group shall be comprised solely of persons having the common purpose of attending the special event.

(e) The 10-day waiting period specified in § 380.25(a) of this part shall not apply to operations under this section to the extent that it would prohibit advertising or sale of the charter after the Board has notified the charter operator that advertising or sale may begin.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-156, 44 FR 12976, Mar. 9, 1979]

§ 380.18a Super Bowl charters.

(a) No charter operator shall advertise a Super Bowl charter unless the operator has submitted written verification to the Board as specified in § 380.28(a)(4), of one of the following:

(1) That it is in physical possession of enough Super Bowl game tickets to provide such tickets for a substantial number of seats on the charter;

(2) That the National Football League (NFL) office or an NFL team

has entered into a written contract to furnish to the operator enough Super Bowl game tickets to provide such tickets for a substantial number of seats on the charter; or

(3) That a person that has a written contract for Super Bowl tickets from the NFL office or an NFL team has entered into a written contract to furnish to the charter operator enough Super Bowl game tickets for a substantial number of seats on the charter.

(b) Except as provided by § 380.31(c), no charter operator shall accept money for seats on a Super Bowl charter, or authorize a travel agent to accept such money, unless the operator has submitted written verification to the Board that it is in physical possession of, or has a written contract with the NFL office, an NFL team, or a person that has entered into a written contract with the NFL office or an NFL team for, enough Super Bowl game tickets to provide one to every charter participant that is to receive such a ticket under the terms of its operator-participant contract.

(c) Any descriptive material for a Super Bowl charter sent to a travel agent by a charter operator shall state that the agent must not accept any money for that charter from a prospective participant unless either (1) the participant elects to have the operator seek tickets under § 380.31(c), or (2) the agent contacts the charter operator and makes a specific and confirmed reservation of a game ticket for that participant. Once such a reservation is made, the charter operator must hold that reservation for that participant unless the participant voluntarily withdraws from the charter.

[SPR-168, 45 FR 1856, Jan. 9, 1980]

§ 380.19 Old-rule charters.

(a) As used in this section, "old-rule charter" means a charter that is covered by a prospectus filed under Part 371, 378, or 378a of this title.

NOTE: Those parts were revoked, effective January 1, 1979. The revocation specified that charters covered by prospectuses filed before that date could be performed on or after that date. 43 FR 36603-4, August 18, 1978.

(b) Direct air carriers performing old-rule charters are not required to have tariffs governing those charters on file with the Board

(c) Indirect air carriers performing old-rule charters shall conform to the requirements of §§ 380.12, 380.30 through 380.33, and 380.33a of this part as if the old-rule charters were Public Charters.

(d) The requirements set forth in paragraph (c) of this section are effective as follows: Section 380.12 applies to old-rule charters scheduled to depart on or after October 1, 1979. Sections 380.30 and 380.33a(d) apply to old-rule charter solicitation materials distributed or broadcast on or after September 1, 1979, but only with respect to charters scheduled to depart on or after October 1, 1979. Sections 380.31 through 380.33 and 380.33a (except 380.33a(d)) apply to old-rule operator-participant contracts entered into on or after September 1, 1979, but only with respect to charters scheduled to depart on or after October 1, 1979.

(Secs. 101(3), 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 737, 740, 743, 758, and 771; 92 Stat. 1731, 1732; 49 U.S.C. 1301, 1302, 1324, 1373, and 1386; secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 797, 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-160, 44 FR 33060, June 8, 1979, as amended by SPR-163, 44 FR 43464, July 25, 1979]

Subpart C—Requirements Applicable to Charter Operators

§ 380.20 Relief from the Act.

(a) Charter operators and foreign charter operators are hereby relieved from the following provisions of the Federal Aviation Act of 1958, as amended, only if and so long as they comply with the provisions of this part and the conditions imposed here, and to the extent necessary to permit them to organize and arrange Public Charters:

(1) Section 401.

(2) Section 402.

(3) Section 403.

(4) Section 404(a), except the requirement to provide adequate service in connection with Public Charters operated hereunder.

(5) Section 405(b).

(6) Section 407 (b) and (c).

(7) If foreign charter operators receive interstate or overseas air transportation rights, any other provision of the Act that would otherwise prohibit them from organizing and arranging Public Charters in interstate or overseas air transportation.

(Secs. 102, 204, 401, 402, and 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50832, Aug. 30, 1979, as amended by SPR-179, 46 FR 56607, Nov. 18, 1981; SPR-188, 47 FR 19691, May 7, 1982; 50 FR 31142, July 31, 1985]

§§ 380.21—380.22 [Reserved]

§ 380.23 Charters that originate in a foreign country.

(a) The Board declines to exercise jurisdiction over foreign charter operators with respect to Public Charters which originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign charter operator at any time it finds that such action is in the public interest.

(b) Notwithstanding the other provisions of this part, a charter operator who is a citizen of the United States shall not be subject to the following requirements with respect to Public Charters that originate in a foreign country:

§ 380.25
§ 380.28
§ 380.30-380.35

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791, 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-156, 44 FR 12979, Mar. 9, 1979]

§ 380.24 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

§ 380.25 Prospectus filing and related requirements.

A charter operator may organize and operate a Public Charter only in accordance with this part, and subject to the following conditions:

(a) No charter operator shall operate, sell, receive money from any prospective participant for, or offer to sell or otherwise advertise a charter or series of charters until at least 10 days after filing with the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a Public Charter prospectus as described in § 380.28.

(b) If within 10 days after the filing the Board notifies the charter opertor that it has rejected the prospectus for noncompliance with this part, the prohibitions set forth in paragraph (a) of this section shall continue until the Board notifies him that it has accepted the prospectus.

(c) The following deviations from a filed prospectus may be made only in accordance with paragraph (d) of this section:

(1) The addition or cancellation of any flight;

(2) A change in any flight date, origin city, or detination city; and

(3) A change in or addition of any direct air carrier, securer, or depository bank.

(d) The charter operator shall amend the prospectus to reflect any change described in paragraph (c) of this section. The amendment shall be filed in the manner and form used for the original prospectus. It shall become effective 10 days after filing unless the operator is notified otherwise.

(e) The charter operator shall notify the depository bank (if any) and the securer of any change described in paragraph (c)(1) or (c)(2) of this section not later than when he files a prospectus amendment to reflect the change. If the securer is unable to adjust the security agreement as required by the change, it shall notify the Board (Special Authorities Division, Bureau of Domestic Aviation) of this fact within 2 business days after receiving notice of the change for the charter operator.

(Approved by the Office of Management and Budget under control number 3024-0029)

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791, 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502; secs. 101(3), 204(a), 401, 402, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, and 92 Stat. 1731; (49 U.S.C. 1301, 1324(a), 1371, 1372, and 1386))

[SPR-156, 44 FR 12979, Mar. 9, 1979, as amended by SPR-165, 44 FR 51209, Aug. 31, 1979; SPR-193, 48 FR 46265, Oct. 12, 1983]

§ 380.25a Charters by direct air carrier affiliates.

A charter operator controlling, controlled by, or under common control with a direct air carrier shall not enter into any operator-participant contract for a charter trip provided by the affiliated direct carrier that is signed by or on behalf of the participant less than 7 days before the scheduled departure date. For the purposes of this section, "control" means any ownership, common management, debtor-creditor, or other relationship between the two entities by which one entity could influence the other's business decisions other than by arms-length business transactions.

(Secs. 102, 204, 401, 402, 416, of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50832, Aug. 30, 1979]

§ 380.26 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 380.27 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 380.28 Charter prospectus.

(a) The charter prospectus shall include an original and one copy of the following:

(1) From the charter operator and the direct air carrier: (i) The proposed flight schedule, listing the origin and destination cities, dates, type of aircraft, number of seats, and charter price for each flight; (ii) the tour itinerary (if any) including hotels (name and length of stay at each), and other ground accommodations and services; and (iii) a statement that they have entered into a charter contract that covers the proposed flight schedule, that the contract complies with all applicable Board regualtions, and that a copy of the schedule has been sent to the depository bank (if any) and the operator's securer. The schedule shall be identified with a number assigned by the charter operator that does not duplicate any schedule numbers assigned by the operator to other proposed flight schedules. The proposed flight schedule, tour itinerary (if any), and statement shall be in the form set out in Appendix B to this part.

(2) From the charter operator and the securer, a statement: (i) That they have entered into a security agreement covering the proposed flight schedule that complies with § 380.34, including the amount of the coverage, the number assigned to it by the securer, and the amount of any outstanding claims against it, and (ii) that the securer has received a copy of the proposed flight schedule. The statement shall identify the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a) of this section. If there are any outstanding claims against the agreement, the charter operator and securer shall also state that they have executed a rider or amendment increasing the coverage by the amount of the claims, or that the securer will separately pay any claims for which it may

be liable without impairing the agreement or reducing the amount of its coverage. These statements shall be in the form set out in Appendix C to this part.

(3) If a depository agreement is used, a statement from the charter operator, the direct air carrier, and the depository bank: (i) That they have entered into a depository agreement covering the proposed flight schedule that complies with § 380.34, and (ii) that the bank has received a copy of the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a)(1) of this section. This statement shall be in the form set out in Appendix D to this part.

(4) From a Super Bowl charter operator, the written verification required by § 380.18a of this part. This shall be as applicable, either a signed statement that the operator has the game tickets, or a copy of the contract with the person who is to supply them. If the supplier of the tickets is not the National Football League or a member team, the supplier's contract with one of those entities must also be submitted.

(b) Each of the statements described in paragraph (a) of this section shall also include the names and addresses of the parties to it, and the originals shall be signed by those parties.

(c) The prospectus may cover a series of charters performed by one charter operator if the departure of the last charter is not more than one year after the departure of the first.

(d) If the prospectus covers a series of charters and the air transportation will be performed by more than one direct air carrier, the prospectus shall include separate statements in accordance with paragraphs (a)(1) and (a)(3) of this section to cover the flights that will be performed by each direct carrier.

(Approved by the Office of Management and Budget under control number 3024-0029)

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; (49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502; secs. 101(3), 204(a), 401, 402, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737, 743, 754, 757, and 92 Stat. 1731; (49 U.S.C. 1301, 1324(a), 1371, 1372, and 1386))

[SPR-156, 44 FR 12979, Mar. 9, 1979, as amended by SPR-165, 44 FR 51209, Aug. 31, 1979; SPR-168, 45 FR 1856, Jan. 9, 1980; SPR-193, 48 FR 46265, Oct. 12, 1983]

§ 380.29 Charter contact.

The charter contract between the charter operator or foreign charter operator and the direct air carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the trip or trips covered by the contract.

§ 380.30 Solicitation materials.

(a) All solicitation materials for a public charter shall include the name of the charter operator and the name of the direct air carrier.

(b) Any solicitation material that states a price per passenger shall also include one of the following:

(1) A statement referring to the operator-participant contract for further information about conditions applicable to the charter; or

(2) The full text of the operator-participant contract.

(c) Except as set forth in § 380.33a for operator's option plan contracts, if the charter prospectus names alternative dates or cities, any solicitation material that states a price per passenger shall also state that the actual dates or cities have not yet been selected, if that is the case.

(d) Any solicitation material that names a hotel but does not name every hotel named in the operator-participant contract shall also state that substitutions may be made.

(e) In any solicitation material from a direct air carrier, indirect air carrier, or an agent of either, for a charter, charter tour (i.e., a combination of air transportation and ground accommodations), or a charter tour component (e.g. a hotel stay), any price stated for such charter, tour, or component shall be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of

1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-156, 44 FR 12979, Mar. 9, 1979, as amended by SPR-195, 49 FR 49440, Dec. 20, 1984]

§ 380.31 General requirements for operator-participant contracts.

(a) No money shall be accepted by a charter operator from a prospective participant unless the participant has agreed to the conditions of the charter by signing an operator-participant contract, as described in § 380.32. If a member of a group that will travel together pays for the group, that member may sign the contract on behalf of the group.

(b) The contract form may include a space that participants may check to authorize the charter operator to retain their money while attempting to make other arrangements for them if there is no space available on the flight, on specific alternative flights they have requested or, in the case of Super Bowl charters, if the operator does not have possession of or a right to any more game tickets.

(c) If there is no space available on the flight or specific alternative flights requested by the participant, or in the case of Super Bowl charters, if the operator does not have either possession of or written contracts for any more game tickets, the operator shall return all the participant's money within 7 days (3 days for Super Bowl charters) after receiving it unless the participant, in accordance with paragraph (b) of this section, has authorized the operator to retain the payments while the operator attempts to make other arrangements, or in the case of Super Bowl charters, attempts to obtain more game tickets, for the participant. If the operator retains the payments while attempting to make other arrangements or obtain game tickets for the participant, it shall notify the participant of the fact within 7 days (3 days for Super Bowl charters) after receiving the payments but in no event later than the departure. For the purpose of the time periods in this paragraph, receipt of money by a travel agent on behalf of a charter operator will not be considered as receipt by the operator.

(d) Except as set forth in § 380.33a for operator's option plan contracts, the operator-participant contract shall not specify alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(e) The contract form shall be printed in 7-point or larger type. The statements required by paragraphs (a), (f), (h), (l), (r), (s), and (y) of § 380.32 shall be printed so as to contrast with the rest of the contract by the use of boldfaced type, capital letters, or a type size that is at least 50 percent larger than that used for the rest of the contract.

(f) The contract form shall include a space that participants may check to indicate that they wish to be furnished details of trip cancellation, health, and accident insurance.

(g) The contract form shall be designed so as to enable participants to retain a copy of the general terms and conditions after signing it. The specific information supplied by participants (such as choices of dates, cities, or other options) need not be retainable.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-156, 44 FR 12979, Mar. 9, 1979; 44 FR 23211, Apr. 19, 1979; as amended by SPR-168, 45 FR 1856, Jan. 9, 1980]

§ 380.32 Specific requirements for operator-participant contracts.

Contracts between charter operators and charter participants shall state;

(a) The name and complete mailing address of the charter operator;

(b) The name of the direct air carrier, the dollar amounts of that carrier's liability limitations for participants' baggage, the type and capacity of the aircraft to be used for the flight, and the conditions governing aircraft-equipment substitutions.

(c) The dates of the outbound and return flights, except that alternative dates may be stated as set forth in § 380.33a for operator's option plan contracts;

(d) The origin and destination cities of each flight leg, except that alternative cities may be stated as set forth in § 380.33a for operator's option plan contracts'

(e) The amount and schedule of payments;

(f) If a depository agreement as provided in § 380.34(b) is used: That all checks and money orders must be made payable to the escrow account at the depository bank (identifying bank) or, when the charter is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account at the depository bank;

(g) The tour itinerary, if any, including the name and location of the hotels, length of stay at each, and other ground accommodations and services that are part of the tour;

(h) That the charter operator may not cancel the charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip;

(i) That if a charter is canceled 10 or more days before the scheduled departure date, the operator will notify the participant in writing within 7 days after the cancellation, but in any event at least 10 days before the scheduled departure;

(j) That if a charter is canceled less than 10 days before departure (*i.e.* for circumstances that make it physically impossible to perform the charter trip), the operator will get the message to the participant as soon as possible;

(k) That if the charter is canceled, a refund will be made to the participant within 14 days after the cancellation;

(l) The right to refunds if the participant changes plans is limited;

(m) The right to refunds if the participant changes plans, including that any participant who wishes to cancel will receive a full refund (less any applicable administrative fee, not to exceed $25) upon providing a substitute participant to the charter operator or its sales agent, or upon being substituted for by a participant found by the charter operator.

(n) The procedure for obtaining the refunds described in paragraph (m) of this section, including that they will be made within 14 days after the cancellation or substitution;

(o) The meaning of "major change", as set forth in § 380.33(a);

(p) That if the charter operator knows of a major change 10 or more days before scheduled departure, the operator will notify the participant of the change within 7 days after first knowing of it, but in any event at least 10 days before scheduled departure;

(q) That if the operator first knows of a major change less than 10 days before scheduled departure, the operator will get the message to the participant as soon as possible.

(r) That within 7 days after receiving a pre-departure notification of a major change but in no event later than departure, the participant may cancel, and that a full refund will be made to the participant within 14 days after canceling;

(s) That upon a post-departure notification of a major change, the participant may reject the substituted hotel or the changed date, origin, or destination of a flight leg and be sent, within 14 days after the return date named in the contract, a refund of the portion of his payment allocable to the hotel accommodations or air transportation not provided. For Super Bowl charters only; that if game tickets are not supplied when promised by the operator-participant contract, the participant must be sent, within 14 days after the return date named in the contract, a refund of the total charter price.

(t) That the participant's rights and remedies set forth in the contract, including the procedures for major changes, shall be in addition to any other rights or remedies available under applicable law, although the operator may condition a refund on the participant's waiver of additional remedies;

(u) That trip cancellation, health, and accident insurance is available and that the operator will furnish details of the insurance to participants who check the space provided for this purpose on the contract form;

(v) The name and address of the surety company or bank issuing the security agreement; and that unless the charter participant files a claim with the charter operator or, if he is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to that participant. Termination means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary;

(w) For international flights only: That additional restrictions may be imposed on the flight by the foreign governments involved, and that if landing rights are denied by a foreign government, the ,flight will be canceled with a full refund to the participant. This statement need not be included in the contract if (1) the prospectus includes a certification by the charter operator and the direct air carrier that landing rights have been obtained from all the foreign governments involved, and (2) all the foreign governments involved have adopted country-of-origin rules for charterworthiness;

(x) That the charter operator is the principal and is responsible to the participants for all services and accommodations offered in connection with the charter. However, the contract may expressly provide that the charter operator, unless he is negligent, is not responsible for personal injury or property damage caused by any direct air carrier, hotel, or other supplier of services in connection with the charter.

(y) For charters to the city hosting the National Football League's Super Bowl, whether the operator will provide tickets to the Super Bowl game as part of the ground package.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; (49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502); secs. 101(3), 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 737, 740, 743, 758, and 771; 92 Stat. 1731, 1732; (49 U.S.C. 1301, 1302, 1324, 1373, and 1386))

[SPR-156, 44 FR 12960, Mar. 9, 1979, as amended by SPR-160, 44 FR 33060, June 8, 1979; SPR-165, 44 FR 51209, Aug. 31, 1979; SPR-168, 45 FR 1857, Jan. 9, 1980]

§ 380.33 Major changes in itinerary or price; refunds.

(a) For the purposes of this section, "major change" means any of the following:

(1) A change in the departure or return date shown in the operator-participant contract (or, if the contract states alternative dates, the date designated to the participant by the charter operator in accordance with § 380.33a(b)), unless the change results from a flight delay. In any event, however, a date change that the operator knows of more than 2 days before the scheduled flight date, and any delay of more than 48 hours, will be considered a major change.

(2) A change in the origin or destination city shown in the operator-participant contract for any flight leg (or, if the contract states alternative cities, the city designated to the participant by the operator in accordance with § 380.33a(b)), unless the change affects only the order in which cities named in a tour package are visited.

(3) A substitution of any hotel that is not named in the operator-participant contract; and

(4) A price increase to the participant that occurs 10 or more days before departure and results in an aggregate price increase of more than 10 percent.

(5) A failure to provide the participant with tickets to the National Football League's Super Bowl game when the participant was supposed to receive them under the terms of the operator-participant contract.

(b) The charter operator shall not increase the price to any participant less than 10 days before departure.

(c) The charter operator shall notify all participants of major changes, as required by the operator-participant contracts. This notification shall include the participants' rights to refunds required to be described in the operator-participant contract. The operator shall, if applicable, also notify the participants that the acceptance of a refund constitutes a waiver of their legal rights.

(d) Except as otherwise specified, notifications and refunds required by this part are considered made at the time they are mailed or sent by an equivalent method.

(e) The charter operator shall make all refunds required to be described in the operator-participant contract within the time limits set forth in paragraphs (k), (n), (r), and (s) of § 380.32, as applicable.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-156, 44 FR 12981, Mar. 9, 1979; as amended by SPR-168, 45 FR 1857, Jan. 9, 1980; SPR-170, 45 FR 32670, May 19, 1980]

EDITORIAL NOTE: For a waiver order and interpretation pertaining to § 380.33(b), see 44 FR 48656, Aug. 20, 1979.

§ 380.33a Operator's option plan.

(a) For the purposes of this part, an operator's option plan contract is an operator-participant contract that states alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(b) Operator's option plan contracts shall state, in addition to the information required by § 380.32, that the selection of the actual dates or cities, as applicable, is at the charter operator's option and will not entitle the participant to a refund, and that the operator will notify the participant of the actual dates or cities at least 10 days before the earliest of any alternative dates for the outbound flight.

(c) Contract forms for all operator's option plan contracts shall be labeled "OPERATOR'S OPTION PLAN" in bold-faced capital letters at least ¼ inch high. The statement required by paragraph (b) of this section and the statement of alternative dates (§ 380.32(c)) or alternative cities (§ 380.32(d)), as applicable, shall be printed so as to contrast with the rest of the contract, as set forth in § 380.31(e).

(d) Any solicitation material that states a price per passenger for an operator's option plan contract shall clearly and conspicuously (1) identify that price as being for the operator's option plan, (2) name all the possible dates or cities, as applicable, and (3) state that the selection of the actual dates or cities is at the charter operator's option.

(e) Charter operators and their agents shall not misrepresent to prospective participants, orally, in solicitation materials, or otherwise, the probability that any particular city or date will be selected from among the alternatives named in an operator's option plan contract.

(f) The charter operator shall notify all participants with operator's option plan contracts of the actual dates or cities, as applicable, as required by the contracts.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-156, 44 FR 12981, Mar. 9, 1979]

§ 380.34 Security and depository agreements.

(a) Except as provided in paragraph (b) of this section, the charter operator or foreign charter operator shall furnish a security agreement in an amount for not less than the charter price for the air transportation, if only air transportation is involved, or, if the charter involves land accommodations in addition to air transportation, a security agreement in one of the following amounts dependent upon the length of the charter or series of charters:

(1) For a charter or series of charters of 14 days or less, security in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters; (2) for a charter or series of charters of more than 14 days but less than 28 days security in an amount of not less than twice the charter price; and (3) for a charter or series of charters of 28 days or more, security in an amount of not less than three times the charter price: *Provided, however,* That the liability of the securer to any charter participant shall not exceed amounts paid by that participant to the charter operator with respect to the charter.

(b) The direct air carrier and the charter operator or foreign charter operator may elect, in lieu of furnishing a security agreement as provided under paragraph (a) of this section, to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section, as follows:

(1) The charter operator shall furnish a security agreement in an amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000. The liability of the securer to any charter participant shall not exceed the amount paid by the participant to the charter operator for that charter.

(2) The direct air carrier and charter operator or foreign charter operator shall enter into an agreement with a designated bank, the terms of which shall provide that all deposits by charter participants paid to charter operators or foreign charter operators and their retail travel agents shall be deposited with and maintained by the bank subject to the following conditions:

(i) On sales made to charter participants by charter operators or foreign charter operators the participant shall pay by check or money order payable to the bank; on sales made to charter participants by retail travel agents, the retail travel agent may deduct his commission and remit the balance to the designated bank by check or money order: *Provided*, That the travel agent agrees in writing with the charter operator or foreign charter operator that if the charter is canceled the travel agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of cancellation of the charter;

(ii) The bank shall pay the direct air carrier the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the air carrier: *Provided*, That, in the case of a round trip charter contract to be performed by one carrier, the total round trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) The bank shall reimburse the charter operator or foreign charter operator for refunds made by the latter to the charter participant upon written notification from the charter operator or foreign charter operator;

(iv) If the charter operator, foreign charter operator or the direct air carrier notifies the bank that a charter has been canceled, the bank shall make applicable refunds directly to the charter participants;

(v) After the charter price has been paid in full to the direct air carrier, the bank shall pay funds from the account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter or series of charters upon presentation to the bank of vendors' bills and upon certification by the charter operator or foreign charter operator of the amounts payable for such ground accommodations and services and the persons or companies to whom payment is to be made: *Provided, however*, That the total amounts paid by the bank pursuant to paragraphs (b)(2) (ii) and (v) of this section shall not exceed either the total cost of the air transportation, or 80 percent of the total deposits received by the bank less any refunds made to charter participants pursuant to paragraphs (b)(2) (ii) and (iv) of this section, whichever is greater;

(vi) As used in this section, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(vii) The bank shall maintain a separate accounting for each charter group;

(viii) Notwithstanding any provisions above, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of the security agreement in the form prescribed herein in excess of the minimum coverage required by paragraph (b)(1) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: *Provided*, That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: *And provided, further*, That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; and

(ix) Except as provided in paragraph (b)(2) (i), (iii), (iv), (v), and (viii) of this section, the bank shall not pay out any funds from the account prior to 2 banking days after completion of each charter, when the balance in the account shall be paid the charter operator or foreign charter operator, upon certification of the completion date by the direct air carrier: *Provided, however*, That if the charter involves air transportation only and the bank has paid the direct air carrier(s) the charter price for the originating flight, and the returning flight if any, and has paid all refunds due to participants, as provided in paragraph (b)(2) (ii) and (iii), respectively, of this section, then the bank may pay the balance in the account to the charter operator upon certification by the direct air carrier performing the originating flight that such flight has in fact departed.

(c)(1) The security agreement required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter operator or foreign charter operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter operator or foreign charter operator and the charter participants.

(2) The security agreement may be either:

(i) A surety bond in the form set forth as Appendix A to this part;

(ii) A surety trust trust agreement in the form set forth as Appendix E to this part; or

(iii) An arrangement with a bank (for instance, a standby letter of credit) that provides protection of charter participant's funds equivalent to or greater than that provided by the bond in Appendix A. An arrangement that furnishes a lesser degree of protection than would be provided under the bond shall be invalid to that extent, and instead the bank, the charter operator or foreign charter operator, and the charter participants shall have the same rights and liabilities as provided under a bond in the form of Appendix A. If the arrangement does not give as much protection as a bond against the risk of the charter operator's bankruptcy, the bank shall be liable in the event of bankruptcy to the same extent as if it had entered into a bond.

(3) Any agreement under paragraph (c)(2)(iii) of this section shall include a statement that, in the event that the other provisions of the agreement do not provide protection to charter participants comparable to that provided under a bond in the form of Appendix A, the bank shall assume, for the benefit of the charter participants, all the liabilities it would have if it entered into the bond.

(4) The security agreement shall be effective on or before the date the charter prospectus is filed with the Board.

(5) The security agreement shall be specifically identified by the issuing securer with a numbering system so that the Board can identify the security agreement with the specific charter or charters to which it relates. These data may be set forth in an addendum attached to the security agreement, which addendum must be signed by the charter operator or foreign charter operator and the securer.

(6) When security is provided by a surety bond, such bond shall be issued by a bonding or surety company (i) whose surety bonds are accepted by the Interstate Commerce Commission

under 49 CFR 1084.6; or (ii) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia.

(7) When security is provided by a security agreement other than a bond, the agreement shall be issued by a national bank complying with the provisions of 12 CFR 7.7010(a), or by a State bank complying with applicable State laws that give authority to issue such agreements, and all such banks must be insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation.

(d) The security agreement required by this section shall provide that unless the charter participant files a claim with the charter operator or foreign charter operator, or, if it is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to such charter participant. Termination means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary.

(Secs. 101(3), 204(a), 401, 402, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737, 743, 754, 757, and 92 Stat. 1731; (49 U.S.C. 1301, 1324(a), 1371, 1372, and 1386))

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-165, 44 FR 51209, Aug. 31, 1979]

§ 380.34a Substitution of direct air carrier's security or depository agreement.

(a) A direct air carrier may substitute its own security agreement and/or depository arrangements, as specified in this section, for those required of the charter operator under § 380.34, but only for charter trips in which all the air transportation is provided by one direct air carrier. Charter operators are relieved from § 380.34 to the extent that the direct carrier substitutes its own arrangements.

(b) The direct air carrier may substitute its security agreement for all of the arrangements required of the charter operator under § 380.34 (a) or (b). Alternatively, it may substitute its depository agreement for the depository agreement required of the charter operator under § 380.34(b)(2). If the direct carrier substitutes its depository agreement, it may also obtain and substitute a security agreement for the one otherwise required of the charter operator under § 380.34(b)(1). If the direct carrier substitutes its depository agreement only, the charter operator must supply the security agreement required under § 380.34(b)(1).

(c) If the direct carrier substitutes a security agreement for all the charter operator's requirements under § 380.34, the charter operator shall include in the charter prospectus, in place of the information in § 380.28(a)(2) regarding the charter operator's security agreement:

(1) A statement in the form set out in Appendix F of this part by the direct air carrier that it will take responsibility for all charter participant deposits (including those for ground accommodations and services) and for the fulfillment of all the charter operator's contractual and regulatory obligations to the charter participants.

(2) A statement from the direct air carrier and its securer (under §§ 207.17, 208.40, 212.15, or § 214.9c), in the form set out in Appendix C of this part, that they have entered into a security agreement assuring the direct air carrier's responsibilities to charter participants under this section in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant), and that the securer has received a copy of the proposed flight schedule identified by the schedule number assigned by the charter operator under this part.

(d) A substitute depository agreement under this section shall be signed by the direct air carrier, the charter operator, and the depository bank, and shall provide, in addition to existing requirements under §§ 207.17, 208.40, 212.15, or § 214.9c, that:

(1) Deposits by charter participants shall be allocated to the flight accounts matching the participant's itinerary in the following way: Each account shall have allocated to it the charter cost of the participant's air transportation on that flight. The portion of each deposit not intended for air transportation services shall be allocated to the account for the return flight in the participant's itinerary. If there is only one flight in the itinerary, the entire payment shall be allocated to that account.

(2) The bank shall pay funds from a flight account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter flight, upon presentation to the bank of vendor's bills and upon certification by the person who contracted for the ground accommodations or services of the amounts payable and the persons or companies to whom payment is to be made, except that no disbursement shall be made that would reduce the balance in the account below the charter cost of the flight.

(3) On sales made to participants by a person other than a retail travel agent, the participant shall pay by check or money order payable to the bank. On sales made to participants by a retail travel agent, payments shall be made in the same manner unless the agent deducts its commission and remits the balance to the bank by check or money order. The agent may deduct its commission only if it agrees in writing with its principal (the charter operator or direct air carrier, as applicable) that, if the charter is canceled, the agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of the cancellation. The depository bank shall pay refunds directly to participants according to the terms of the operator-participant contract and the terms of this rule.

(e) If the direct carrier substitutes a security agreement in addition to substituting a depository agreement, the charter prospectus information must include all the information required by paragraphs (c) and (d) of this section, except for the amount of the security agreement. That agreement shall be in an amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000.

(f) A copy of the depository agreement under paragraph (d) of this section shall be filed with the Board, and it shall not be effective until approved by the Board.

(g) A copy of the security agreement under paragraph (c) or paragraph (e) of this section shall be filed with the Board. It shall insure the financial responsibility of the direct air carrier for supplying the transportation and all other accommodations, services, and facilities in accordance with the contracts between the charter operator and the charter participants. Such security agreement shall meet all the other requirements of § 380.34 (c) and (d).

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended; 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50832, Aug. 30, 1979]

§ 380.35 Disbursements from depository account.

No charter operator or direct air carrier shall cause its agents or the depository bank to make disbursements or payments from deposits except in accordance with the provisions of this part.

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended; 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50833, Aug. 30, 1979]

§ 380.36 Record retention.

Every charter operator conducting a charter pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this chapter.

Subpart D—Requirements Applicable to Direct Air Carriers

§ 380.40 Charter not to be performed unless compliance with part.

(a) For all Public Charters other than foreign-originating charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with and that the charter operator's authority under this part has not been suspended by the Board.

(b) For foreign-originating Public Charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless (1) the charter is conducted in accordance with Subpart B and § 380.42, and (2) the charter operator conforms to all requirements of this part that are applicable to charter operators within the Board's jurisdiction, other than §§ 380.25, 380.28, 380.30–36, and 380.50.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502)

[SPR-156, 44 FR 12981, Mar. 9, 1979]

§ 380.41 [Reserved]

§ 380.42 Public Charters operated for foreign charter operators.

At least 45 days before the departure date of a foreign-originating charter or series of charters to be operated by a direct air carrier for a foreign charter operator, the carrier shall file with the Board (Special Authorities Division, Bureau of Domestic Aviation) a charter prospectus containing the following information:

(1) The name and address of the foreign charter operator;

(2) The proposed date and time of each flight;

(3) The aircraft type to be used for each flight including the number of seats;

(4) The charter price for the aircraft;

(5) The duration of each charter and, if applicable, the tour itinerary, including the names of hotels, and any sightseeing or other arrangements included in the tour; and

(6) The charter price per passenger, and, if the charter trip includes a tour, the tour price per passenger.

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-164, 44 FR 49445, Aug. 23, 1979]

§ 380.43 Cancellations by direct air carriers.

The direct air carrier shall not cancel any charter under this part less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip.

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50833, Aug. 30, 1979]

§ 380.44 [Reserved]

§ 380.45 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any air carrier, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50833, Aug. 30, 1979]

Subpart E—Charter Trip Reporting Requirements

§ 380.50 Charter trip reporting.

(a) The direct air carrier shall promptly notify the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) regarding any charters covered by a prospectus filed under § 380.28 that are later canceled.

[SPR-149, 43 FR 36604, Aug. 18, 1978, as amended by SPR-171, 45 FR 46801, July 11, 1980]

Subpart F—Registration of Foreign Charter Operators

SOURCE: SPR-179, 46 FR 56607, Nov. 18, 1981, unless otherwise noted.

§ 380.60 Purpose.

This subpart establishes registration procedures for foreign charter operators intending to engage in the formation of groups for transportation on Public Charters that originate in the United States.

§ 380.61 Operations by foreign charter operators.

(a) Each foreign charter operator shall be registered under this subpart and file a prospectus under § 380.25 before organizing groups for transportation on Public Charters that originate in the United States.

(b) Each foreign charter operator registered under this subpart shall comply with the other provisions of this part directed to charter operators.

§ 380.62 Registration applications.

(a) To be registered under this subpart, a foreign charter operator shall file two copies of an application for registration with the Board's Bureau of International Aviation, Regulatory Affairs Division. The Board will list the names and nationalities of all persons applying for registration in its Weekly Summary of Filings.

(b) The application shall be made on Form 300, which can be obtained from the CAB's Publications Services Division, Washington, D.C. 20428.

(c) The applicant shall clearly indicate in its application for registration whether it requests authority to engage in foreign, interstate and/or overseas air transportation.

(Approved by the Office of Management and Budget under control number 3024-0052)

[SPR-179, 46 FR 56607, Nov. 18, 1981, as amended by SPR-188, 47 FR 19691, May 7, 1982; SPR-193, 48 FR 46265, Oct. 12, 1983]

§ 380.63 Objections to registration applications.

Any person objecting to the registration application of a foreign charter operator or to a proposed change in the name or ownership of that operator shall file an objection with the Bureau of International Aviation, Regulatory Affairs Division, within 28 days after the Board receives the properly completed registration application.

§ 380.64 Board action on a registration application.

(a) After a registration is received, one of the following actions will be taken.

(1) The application will be approved by the stamping of the effective date of registration on CAB Form 300 and returning the duplicate copy of the form to the operator;

(2) Additional information will be requested from the applicant;

(3) The applicant will be notified that its application will require further analysis or procedures, or is being referred to the Board for formal action;

(4) The registration application will be rejected if it does not comply with the filing requirements of this subpart;

(5) The application will be approved subject to such terms, conditions, or limitations as may be required by the public interest; or

(6) The registration application will be rejected for reasons relating to the failure of effective reciprocity or if the Board finds that it would be in the public interest to do so.

(b) One of the actions described in paragraph (a) of this section will normally be taken within 60 days after the registration application is received. The Board will also consider requests for faster action that include a full explanation of the need for expedited action.

[SPR-179, 46 FR 56607, Nov. 18, 1981, as amended by SPR-188, 47 FR 19691, May 7, 1982]

§ 380.65 Notification of change of operations or ownership.

(a) Not later than 30 days before any change in its name or address or before a temporary or permanent cessation of operations, each foreign charter operator registered under this subpart shall notify the Board's

Bureau of International Aviation, Regulatory Affairs Division, of the change by resubmitting CAB Form 300.

(b) A foreign charter operator registered under this subpart shall apply for an amendment to that registration not later than 30 days after either of the following events:

(1) A person listed on its existing registration as owning or holding beneficial interest in at least 10 percent of the operator's stock reduces its holding to below 10 percent;

(2) A person not listed on the existing registration as owning or holding beneficial interest in at least 10 percent of the operator's stock becomes an owner or holder of 10 percent or more of that stock.

(c) An application for an amendment shall be made by resubmitting CAB Form 300. The existing registration shall remain valid pending Board action on the amendment.

§ 380.66 Cancellation or conditioning of the registration.

The registration of a foreign charter operator may be canceled or subjected to additional terms, conditions, or limitations if any of the following occur:

(a) The operator files a written notice with the Board that it is discontinuing its charter operations;

(b) A substantial ownership interest is acquired by persons who are not citizens of the same country as the registrant; or

(c) The Board finds, after notice and an opportunity for responses, that it is in the public interest to do so. In making this finding, the Board will consider whether effective reciprocity exists between the United States and the government of the foreign charter operator.

[SPR-179, 46 FR 56607, Nov. 18, 1981, as amended by SPR-188, 47 FR 19691, May 7, 1982]

§ 380.67 Waiver of sovereign immunity.

By accepting an approved registration form under this subpart, an operator waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it, in any court or other tribunal of the United States, that is based upon a claim arising out of operations by the operator under this part.

§ 380.68 [Reserved]

§ 380.69 Waivers.

The Board upon application or on its own initiative may waive any of the provisions of this subpart if it finds such action to be in the public interest.

APPENDIX A—PUBLIC CHARTER OPERATOR'S SURETY BOND UNDER PART 380 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 380)

Know all men by these presents, that we ——— (name of charter operator) of ———, (city) ——— as (State) Principal (hereinafter called Principal), and ——— (name of surety) a corporation created and existing under the laws of the State of ——— (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of ——— (see § 380.34(f) Part 380) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the principal intends to become a Public Charter operator pursuant to the provisions of part 380 of the Board's special regulations and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to part 380 of the Board's special regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by the Principal as an authorized charter operator with part 380 of the Board's special regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and shall inure t the benefit of any and all charter participants to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to charter participants any sum or sums for which the Principa may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect with respect to the receipt of moneys from charter participants and proper disbursement thereof pursuant to and in accordance with the provisions of part 380 of the Board's special regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

The bond shall cover the following charters:[1]

Surety company's bond No. ————
Date of flight departure ————
Place of flight departure ————

This bond is effective the —— day of ———, 19–, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of the damages hereinbefore described which arise as the result of any contract, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if he is unavailable, to the Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular charter covered by this bond except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the —— day of ———, 19—.

PRINCIPAL

Name ————
By: Signature and title ————
Witness ————

SURETY

Name ————
By: Signature and title ————
Witness ————

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 380.34(d) of part 380.

APPENDIX B—STATEMENT OF CHARTER OPERATOR AND DIRECT AIR CARRIER FLIGHT SCHEDULE NUMBER——

1. Name and address of charter operator.
2. Name and address of direct air carrier.
3. Proposed date and routing of each flight.
4. Type of aircraft and number of seats engaged:
5. Charter price for each flight:
6. Tour itinerary (if any) including hotels (names and length of stay at each), and other ground accommodations and services:

We, ——— (charter operator) and ——— (direct air carrier), certify that we have entered into a charter contract on ——— (date) that covers the flight schedule described above.

A copy of the flight schedule has been sent to (complete applicable blanks and write "N.A." in those not applicable):

————
(charter operator's securer)

————
(charter operator's depository bank)

————
(direct carrier's securer)

————
(direct carrier's depository bank)

Charter Operator
By: (Signature and date) ————
(Title) ————

Direct Air Carrier
By: (Signature and date) ————
(Title) ————

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[1] These data may be supplied in an addendum attached to the bond.

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50833, Aug. 30, 1979]

Appendix C—Statement of Charter Operator and Securer

We, ——— (charter operator) and ——— (securer), certify that we have entered into a security agreement, No. ——, in the amount of $—, on ——(date). This agreement covers proposed flight schedule number ——, a copy of which has been received by ——— (securer). This agreement complies with § 380.34 of the Civil Aeronautics Board's Special Regulations (14 CFR 380.34). This agreement is a:

—surety bond

—surety trust agreement

——(specify type of agreement if other than a bond or surety trust agreement).

(check one)

—There are no outstanding claims against this agreement.

—There are outstanding claims against this agreement in the amount of $—. We have executed a rider or amendment to the agreement on—(date) increasing the coverage by this amount.[1]

Charter Operator

By: (Signature and date) ————————

(Title) ————————

(Address) ————————

Securer

By: (Signature and date) ————————

(Title) ————————

(Address) ————————

(Secs. 101(3), 204(a), 401, 402, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737, 743, 754, 757, and 92 Stat. 1731; (49 U.S.C. 1301, 1324(a), 1371, 1372, and 1386))

[SPR-165, 44 FR 51210, Aug. 31, 1979]

Appendix D—Statement of Charter Operator, Direct Air Carrier and Depository Bank

We, ——— (charter operator, if any)[2], ——— (direct air carrier), and ——— (depository bank) certify that we have entered into a depository agreement on —— (date). This depository agreement covers proposed flight schedule number ——, a copy of which has been received by ——— (depository bank). The depository agreement complies with (§ 380.34)(§ 380.34a) of the Civil Aeronautics Board's Special Regulations (14 CFR 380.34 or 380.34a).

Charter Operator

By: (Signature and date)————————

(Title) ————————

(Address) ————————

Depository Bank

By: (Signature and date)————————

(Title) ————————

(Address) ————————

Direct Air Carrier

By: (Signature and date)————————

(Title) ————————

(Address) ————————

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50834, Aug. 30, 1979]

Appendix E—No. ——; Public Charter Surety Trust Agreement

This Trust Agreement is entered into between ——— (Charter operator) incorporated under the law of —— with its principal place of business being —— (hereinafter referred to as the Operator), and ——, (Bank) with its principal place of business being —— (hereinafter referred to as the "Trustee"), for the purpose of creating a trust to become effective as of the —— which trust shall continue in force until terminated as hereinafter provided.

The Operator intends to become a Public Charter operator pursuant to the provisions of Part 380 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and has elected to file with the Civil Aeronautics Board such a Surety Trust Agreement as will insure financial responsibility with respect to all monies received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor.

This Surety Trust Agreement is written to assure compliance by the Operator with the provisions of Part 380 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants. It shall inure to the benefit of any and all charter participants to whom the Operator may be held legally liable for any of the damages herein described.

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[1] In the place of this sentence, the following statement may be used: "——— (securer) will separately pay any claims for which it may be liable without impairing the security agreement or reducing the amount of its coverage.

[2] Write "N.A." if there is no charter operator.

It is mutually agreed by and between the operator and Trustee that the Trustee shall manage the corpus of the trust and carry out the purposes of the trust as hereinafter set forth during the term of the trust for the benefit of charter participants (who are hereinafter referred to as "Beneficiaries.")

Beneficiaries of the trust created by this Agreement shall be limited to those charter participants who meet the following requirements:

1. Those charter participants who have contractually bound themselves to participate in charters operated or proposed to be operated by the Operator.

2. Who have legal claim or claims for money damages against the Operator by reason of the Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by that Operator while this trust is in effect with respect to the receipt of monies and proper disbursement thereof pursuant to Part 380 of the Board's Special Regulations; and

3. Who have given notice of such claim or claims in accordance with this Trust Agreement, but who have *not* been paid by the Operator.

The Operator shall convey to the Trustee legal title to the trust corpus, which has a value of ——, by the time of the execution of this Agreement.

Trustee shall assume the responsibilies of the Trustee over the said trust corpus and shall distribute from the trust corpus to any and all Beneficiaries to whom the Operator, in its capacity as a Public Charter operator, may be held legally liable by reason of the Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator, while this trust is in effect with respect to the receipt of monies and proper disbursement thereof pursuant to Part 380 of the Board's Special Regulations in connection with said charters, such damages as will discharge such liability while this trust is in effect; *Provided, however,* That the liability of the trust to any Beneficiary shall not exceed the charter price (as defined in Part 380 of the Board's Special Regulations) paid by or on behalf of any such Beneficiary; *Provided, further,* That there shall be no obligation of the trust to any Beneficiary if the Operator shall pay or cause to be paid to any Beneficiary any sum or sums for which the Operator may be held legally liable by reason of its failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator in its capacity as charter operator while this trust is in effect with respect to the receipt of monies and proper disbursement thereof pursuant to Part 380 of the Board's Special Regulations; *And provided still further,* That the liability of the trust as administered by the Trustee shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments, shall amount in the aggregate to ——. Notwithstanding anything herein to the contrary, in no event shall the obligation of the trust or the Trustee hereunder exceed the aggregate amount of ——.

The Trustee agrees to furnish written notice to the Civil Aeronautics Board forthwith all suits or claims filed and judgements rendered (of which it has knowledge), and of payments made by the Trustee under the terms of this trust.

The trust shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Operator after the termination of this trust as herein provided, but such termination shall not affect the liability of the trust hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Operator prior to the date that such termination becomes effective.

Liability of the trust shall in all events be limited only to a Beneficiary or Beneficiaries who shall within sixty days after the termination of the particular charter give written notice of claim to the Operator or, if it is unavailable, to the Trustee, and all liability of the trust with respect to participants in a charter shall automatically terminate sixty days after the termination date of each particular charter covered by this trust except for claims filed in the time provided herein.

Sixty-one days after the completion of the last charter covered by this Trust Agreement, the trust shall automatically terminate except for claims of any Beneficiary or Beneficiaries previously made in accordance with this Agreement still pending on and after said sixty-first day. To the extent of such claims, the trust shall continue until those claims are discharged, dismissed, dropped, or otherwise terminated; the remainder of the trust corpus shall be conveyed forthwith to the Operator. After all remaining claims which are covered by this Trust Agreement pending on and after the said sixty-first day have been discharged, dismissed, dropped, or otherwise terminated, the Trustee shall convey forthwith the remainder of the trust corpus, if any, to the Operator.

Either the Operator or Trustee may at any time terminate this trust by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty days after the actual receipt of said notice by the Board.

In the event of any controversy or claim arising hereunder, the Trustee shall not be required to determine same or take any other action with respect thereto, but may await the settlement of such controversy or claim by final appropriate legal proceedings, and in such event shall not be liable for interst or damages of any kind.

Any Successor to the Trustee by merger, consolidation, or otherwise, shall succeed to this trusteeship and shall have the powers and obligations set forth in this Agreement.

The trust created under this Agreement shall be operated and administered under the laws of the State of ——.

IN WITNESS WHEREOF, the Operator and Trustee have executed this instrument on the — day of —, 19—.

Trustee ————

Charter Operator ————

(Secs. 101(3), 204(a), 401, 402, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, and 92 Stat. 1731; (49 U.S.C. 1301, 1324(a), 1371, 1372, and 1386))

[SPR-165, 44 FR 51211, Aug. 31, 1979]

APPENDIX F—STATEMENT OF DIRECT AIR CARRIER

I, —— (direct air carrier), hereby promise that I will take responsibility for all obligations owed by —— (charter operator) to participants on charter flight schedule No. ——) or other designation of charter trip), including obligations for ground services and accommodations.

Direct Air Carrier

(Signature and date) ————

(Title) ————

(Address) ————

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1302, 1324, 1371, 1372, 1386))

[SPR-166, 44 FR 50834, Aug. 30, 1979]

PART 382—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Subpart A—General Provisions

Sec.

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382.24 Complaints.
382.25 Procedures for noncompliance.

AUTHORITY: Sec. 504, Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794; secs. 204, 401, 404, 406, 407, 416, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 760, 763, 766, 771, 92 Stat. 1732, 49 U.S.C. 1324, 1371, 1374, 1376, 1377, 1386; E.O. 11914, 41 FR 17871.

SOURCE: SPR-189, 47 FR 25948, June 16, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 382.1 Purpose.

The purpose of this part is to ensure that handicapped persons receive adequate air transportation service, without unjust discrimination based on handicap, and to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The part establishes regulations to prohibit discrimination in air transportation against qualified handicapped persons, and to ensure:

(a) That handicapped persons receive reasonable access to commercial air transportation,

(b) That certain specific practices are prohibited, and

(c) That certain specific changes in service are made.

The part is designed to ensure that transportation of handicapped persons is integrated into the overall air transportation system.

§ 382.2 Applicability.

(a) This subpart applies to all certificated air carriers, and to all commuter air carriers that receive subsidy or compensation for losses directly or through another recipient from the Board under section 406 or section 419 (a)(5), (a)(7), or (b)(6) of the Federal Aviation Act of 1958, as amended.

(b) This subpart shall take effect on June 15, 1982.

§ 382.3 Definitions.

As used in this part:

(a) "Facility" means all or any portion of a carrier's aircraft, buildings, structures, equipment, roads, walks, parking lots, and other real or personal property, normally used by passengers or prospective passengers, or any interest in such property to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

(b) "Handicapped person" means a person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment.

(c) "Qualified handicapped person" means, with respect to the provision of air transportation, a handicapped person:

(1) Who tenders payment for air transportation;

(2) Whose carriage will not violate the requirements of the Federal Aviation Regulations (Chapter I of this title) or, in the reasonable expectation of carrier personnel designated under § 382.13(a), jeopardize the safe completion of the flight or the health or safety of other persons; and

(3) Who is willing and able to comply with reasonable requests of airline personnel or, if not, is accompanied by a responsible adult passenger who can ensure that the requests are complied with. A request will not be considered reasonable if:

(i) It is inconsistent with this part; or

(ii) It is neither safety-related nor necessary for the provision of air transportation.

(d) "Qualified handicapped person" means, with respect to the provision of related services, a handicapped person who meets the essential eligibility requirements for receipt of those services.

[SPR-189, 47 FR 25948, June 16, 1982, as amended by SPR-191, 47 FR 51858, Nov. 18, 1982]

§ 382.4 Prohibition against discrimination.

Carriers subject to this part shall not discriminate against any qualified handicapped person because of that person's handicap.

§ 382.5 General discriminatory practices.

A carrier subject to this part shall not, directly or through contractual, licensing, or other arrangement, on the basis of handicap:

(a) Exclude a qualified handicapped person from or deny that person the benefit of any air transportation or related services that are available to other persons, even if there is separate or different service available for handicapped persons; or

(b) Provide to a qualified handicapped person air transportation or related services that are separate or different from those provided to others, unless that action is reasonably necessary to provide the person with access to air transportation or related services or is requested by the person.

[SPR-189, 47 FR 25948, June 16, 1982, as amended by SPR-191, 47 FR 51858, Nov. 18, 1982]

Subpart B—Specific Requirements

§ 382.10 Applicability.

(a) This subpart applies to all air carriers that receive a subsidy directly or through another recipient from the Board under section 406 or section 419 (a)(5) or (b)(6) of the Act.

(b) Except as otherwise noted, the provisions of this subpart shall take effect on September 13, 1982.

§ 382.11 Accessibility.

(a) Except as specified in paragraph (b) of this section, each carrier's facilities, services, and reservation system, when viewed in their entirety, shall be readily accessible to and usable by handicapped persons. It is not required that every facility or every part of the facilities for each flight be made accessible to or usable by handicapped persons.

(b) Each carrier's aircraft shall be reasonably accessible to handicapped persons with mobility impairments.

(c) This section shall take effect on December 12, 1982.

§ 382.12 Availability of information.

(a) Carriers shall ensure that deaf persons and blind persons have timely access to important information, including but not limited to, information on flight delays, schedule changes, or gate changes, information about emergency procedures, and necessary information during actual emergencies.

(b) This section shall take effect on December 12, 1982.

§ 382.13 Refusal of service.

(a) A handicapped person shall be presumed to be a qualified handicapped person unless a carrier has a reasonable, specific basis for doubting those qualifications. A carrier shall not refuse transportation to the handicapped person unless an agent or employee designated by the carrier to make such determinations and familiar with the carrier's standards and procedures for such determinations reasonably believes on the basis of available information, including any presented by the handicapped person, that the person is not a qualified handicapped person.

(b) A carrier may require a handicapped person to be accompanied by an attendant if that person needs extraordinary personal care during flight (feeding, assistance in the the lavatory, or nursing services), or if that person must be attended in order to meet the definition of a qualified handicapped person. Minor assistance with meals, such as opening silverware packages or describing the type and location of foods on a tray, is not "feeding" for the purpose of this section. A carrier shall not require an attendant for any other handicapped person, except when reasonably necessary for flight safety in accordance with the regulations or policies of the Federal Aviation Administration. All decisions to require a passenger to be accompanied by an attendant shall be made by an agent or employee designated by the carrier to make such determinations and familiar with the carrier's standards and procedures for such determinations.

(c) A carrier shall not refuse transportation to, or require attendants for, persons because they are unable to feed themselves, if they elect not to eat during the flight. A carrier shall not refuse transportation to, or require attendants for, persons because they are incontinent or are unable to use the restrooms without assistance, if they have made adequate alternative arrangements for waste disposal.

(d) A carrier may refuse transportation to a person who will need extensive special assistance from the carrier if the person fails to comply with advance notice requirements established by the carrier in accordance with § 382.15(c), and the necessary equipment or personnel cannot, by reasonable efforts, be made available without delaying the flight.

(e) The name of the employee designated by the carrier to refuse service or require an attendant under this section shall be made known to ticket and reservation agents, who shall inform any person who requests that name.

§ 382.14 Guide dogs and personal equipment.

(a) Carriers shall allow blind and deaf passengers to be accompanied on aircraft by guide dogs on all flights in interstate and overseas air transportation and on all flights in foreign air transportation where such carriage is not prohibited by the laws of the other country.

(b) Carriers shall allow passengers using canes or crutches to keep those aids near them at all times to the extent permitted by § 121.589(e) of this title.

(c) Carriers shall make reasonable efforts to permit handicapped persons to take folding wheelchairs aboard and to stow those wheelchairs in the passenger compartment if such carriage will not violate § 121.589 of this title or Department of Transportation regulations for the transportation of hazardous materials in 49 CFR Parts 172, 173, and 175. When passenger compartment stowage is not provided, carriers shall provide for the checking and prompt return of passengers' wheelchairs at the door of the aircraft, so that pasengers may use their own wheelchairs to the extent possible in boarding and deplaning, except when this practice would be inconsistent with Department of Transportation regulations governing the transportation of hazardous materials.

(d) Carriers shall accept as baggage battery-powered wheelchairs and personal oxygen supplies of handicapped passengers to the extent permitted by Department of Transportation regulations governing the transportation of hazardous materials.

(e) In determining carrier liability for loss, delay, or damage to baggage and personal effects, passengers' personal wheelchairs shall not be treated as fragile articles. Carriers shall assume the same liability, and offer the same excess valuation coverage, for personal wheelchairs that they do for ordinary baggage.

§ 382.15 Availability of service and equipment.

(a) Subject to the advance notice requirements of paragraph (c) of this section, carriers shall ensure the availability of:

(1) Medical oxygen for on-board use;

(2) Assistance in boarding and deplaning, using as necessary personnel, ground wheelchairs, aisle chairs, and, if available, the ramps or mechanical lifts required by 49 CFR 27.71; and

(3) Personnel and equipment to assist in moving into and out of the airport terminal, in handling baggage, and in making flight connections.

(b) Carriers shall make reasonable efforts to assist passengers in moving to and from restrooms on board the aircraft.

(c) Carriers shall not establish advance notice requirements for the carriage of handicapped passengers who will not need extensive special assistance from the carrier. Carriers may establish reasonable advance notice requirements of up to 48 hours for the provision of extensive special assistance, except that the carrier may not refuse to provide such assistance on the ground of inadequate notice if the service or equipment is available with the lesser notice given. For the purposes of this paragraph, extensive special assistance includes:

(1) Medical oxygen for on-board use;

(2) Boarding and deplaning assistance using mechanical boarding lifts, aisle chairs, other special equipment, or requiring the presence of more than the usual complement of personnel; and

(3) Ground wheelchairs at facilities where they are not usually available.

(d) Carriers may impose reasonable, nondiscriminatory charges on individuals using special assistance. Carriers shall not charge handicapped passengers for any special assistance unless all other passengers using the assistance are also charged for it. Carriers shall not charge handicapped passengers for any assistance required because their aircraft are not readily accessible.

(e) Carriers shall not insist upon providing special assistance to a handicapped person who does not request it, unless the assistance is reasonably necessary for the passenger to meet the definition of qualified handicapped person.

(f) This section shall take effect on December 12, 1982.

[SPR-189, 47 FR 25948, June 16, 1982, as amended by SPR-191, 47 FR 51858, Nov. 18, 1982]

Subpart C—Compliance

§ 382.20 Applicability.

(a) This subpart applies to all air carriers that receive a subsidy directly or through another recipient from the Board under section 406 or section 419 (a)(5) or (b)(6) of the Act.

(b) The provisions of this subpart, except § 382.23, shall take effect on September 13, 1982.

§ 382.21 Assurance of compliance.

Each carrier applying for Federal financial assistance from the Board shall, as a condition to approval of its application and payment of any claims, include in any application or claim an assurance that it will comply with this part.

(Approved by the Office of Management and Budget under control number 3024-0056)

[SPR-189, 47 FR 25948, June 16, 1982, as amended by SPR-192, 47 FR 52693, Nov. 23, 1983]

§ 382.22 Carrier manuals.

(a) Each carrier shall, upon request, submit to the Board any employees' manual that it maintains, containing company rules for accommodating handicapped passengers.

(b) If the Board finds that any company rule set forth in the manual is at variance with any provision of this part, the Board may by order modify that rule to the extent necessary to conform it to this part.

(Approved by the Office of Management and Budget under control number 3024-0056)

[SPR-189, 47 FR 25948, June 16, 1982, as amended by SPR-192, 47 FR 52693, Nov. 23, 1983]

§ 382.23 Evaluation of practices and facilities.

(a) Each carrier shall, within 1 year after the effective date of Subpart A, evaluate its current policies and practices, and their effects, for compliance with this part and review its services and facilities to determine whether they are reasonably accessible to and usable by handicapped persons.

(b) In conducting the evaluation and in making any necessary modifications of its policies, services, or facilities, each carrier shall consult with and obtain the views of handicapped persons.

(c) Each carrier shall provide to the Board a description of the evaluation required by paragraph (a) of this section, including areas examined, problems identified, remedial steps taken or planned, and a summary of its consultations with handicapped persons. Each carrier shall, for at least 3 years after completing the evaluation, maintain on file and make available for public inspection a copy of this description.

(Approved by the Office of Management and Budget under control number 3024-0056)

[SPR-189, 47 FR 25948, June 16, 1982, as amended by SPR-192, 47 FR 52693, Nov. 23, 1983]

§ 382.24 Complaints.

Any person who believes that he or she has been the victim of discriminatory action in violation of this part or applicable tariff rules may file a complaint with the Board under § 302.201 of this chapter. The complaint will be processed under the procedures set forth in Part 302 of this chapter.

§ 382.25 Procedures for noncompliance.

(a) If a carrier fails to comply with this part, the Board may order suspension or termination of, or refuse to grant or continue, Federal financial assistance, or may use any other means authorized by law to ensure compliance, including assessment of civil penalties or the issuance of a cease and desist order pursuant to the enforcement procedures of Part 302 of this chapter.

(b) No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until the Board has:

(1) Informed the carrier of the failure to comply and determined that compliance cannot be accomplished by voluntary means,

(2) Granted the carrier an opportunity for a hearing, and

(3) Found a failure by the carrier to comply with a requirement of this part.

(c) The Deputy General Counsel is authorized to institute proceedings for the enforcement of this part.

SUBCHAPTER E—ORGANIZATION

PART 384—STATEMENT OF ORGANIZATION, DELEGATION OF AUTHORITY, AND AVAILABILITY OF RECORDS AND INFORMATION

Sec.
384.1 Purpose.
384.2 General statement of the Board's functions.
384.3 Persons and rules utilized by the Board.
384.3a Proxy voting for Board Members.
384.4 Offices.
384.5 Public hearings.
384.6 Formal submissions.
384.7 Organization and delegation of authority.
384.8 Availability of information and materials.

AUTHORITY: Secs. 204, 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 788, 49 U.S.C. 1324, 1481.

SOURCE: OR-20, 32 FR 8797, June 21, 1967, unless otherwise noted.

§ 384.1 Purpose.

This part, together with Parts 385 and 310 of this chapter, is published in compliance with Pub. L. 90-23, section (a)(1), 5 U.S.C. 552(a)(1), and constitutes a general description of the Civil Aeronautics Board. More detailed information is available in Parts 385 and 310 of this chapter and from other sources listed herein.

§ 384.2 General statement of the Board's functions.

In general, the Board's functions center around the promotion and regulation of domestic and international U.S. air carrier operations and the operations of foreign air carriers to and from the United States. The Board's role in these matters is economic, legal, and advisory, whereas the physical and safety aspects of aeronautics are the responsibility of the Department of Transportation and the National Transportation Safety Board. The Civil Aeronautics Board is responsible for granting authorizations to carriers by air to engage in interstate, overseas, and foreign transportation. It issues certificates to domestic air carriers authorizing them to engage in transportation by air within the United States and between the United States and foreign countries, and permits to foreign air carriers for operations to and from the United States. It also authorizes the flight of foreign civil aircraft in the United States for other purposes. The Board is the repository of the tariffs filed by the air carriers, and is responsible for supervising the rates and fares charged the public for air transportation; it establishes rates for the carriage of mail by air carriers; and it authorizes and pays subsidy to certain air carriers where required for the development of an adequate air transportation system. The Board passes on mergers, acquisitions of control, interlocking relationships, agreements, and cooperative working arrangements between air carriers, and between air carriers and other aeronautical enterprises. It has jurisdiction over unfair competitive practices of air carriers and ticket agents selling air transportation and is responsible for the enforcement of applicable laws and regulations. Additionally, the Board regulates accounting practices of air carriers, and requires them to file regular financial and operating reports with the Board. The Board also consults with and assists the Department of State in the negotiation of agreements with foreign governments for the establishment or development of air routes and services.

§ 384.3 Persons and rules utilized by the Board.

In carrying out its functions the Civil Aeronautics Board utilizes:

(a) The Board's staff, which consists of various specialized bureaus and offices, each dealing with a particular area involving air transportation and performing administrative and technical work for the Board, advising the Board, and performing duties for the Board inherent in its position in the organizational structure or which the Board has delegated to it. The staff is described more fully in § 384.7.

(b) Published rules, which are published in the FEDERAL REGISTER and codified in this Title 14 of the Code of

Federal Regulations. These rules may be inspected in the Board's Public Reference Room, or purchased from the Superintendent of Documents, Government Printing Office. The published rules include:

(1) Procedural Regulations which govern the formal and informal methods whereby persons dealing with the Board can present information to the Board to enable the Board to make the decisions for which it is responsible under the Federal Aviation Act of 1958 (49 U.S.C. 1301 *et seq.*).

(2) Substantive Economic Regulations, which prescribe to those within the Board's jurisdiction various substantive and procedural requirements relating to specific areas of air carrier operations.

(3) Statements of Policy, in which the Board announces a trend it will develop or a future course of action it will follow in a particular area of decision; this policy is then used as a guide in deciding specific cases which reach the Board.

(4) Special Regulations, which deal with matters, and prescribe duties and conduct for both air carriers and Board employees, which do not fall within the other Board regulations.

(5) Organization Regulations, delegating matters to the Board's staff and describing how the public may deal with the Board in obtaining information.

§ 384.3a Proxy voting for Board Members.

(a) *Use of proxies.* In all cases, even through a proxy may be used, the Board Member shall exercise his own discretion and determine how a vote shall be cast. However, unless otherwise prohibited by law, his assistant or other members of his personal staff or another Board Member may actually cast the vote in the manner determined by and pursuant to the instructions of the Board Member, as set forth below.

(b) *Board meetings.* A proxy may only be exercised at a Board meeting by another Board Member. The recorder shall enter in the minutes of the Board meeting every exercise of a proxy by one Board Member for another and a description of the matter which was the subject of the proxy vote. The recorder shall also maintain a proxy journal, entering therein the information recorded in the minutes with respect to proxy voting, including the date of the minute involved.

(c) *Notation items.* A proxy may be exercised by a Member's assistant or other member of his personal staff. The proxy shall be exercised by placing the Member's initials on the tally sheet accompanying the notation followed by the signature of the person exercising the proxy, or by placing the Board Member's name on the signature sheet followed by the initials of the person signing. Each Board Member's office shall keep a notation proxy journal showing with respect to each notation item the date when the proxy was exercised, the name of the person who exercised the proxy and the number or other description of the action. Each Board Member is expected to be aware of all proxy votes on his behalf on all notation items when such matters are before the Board for ratification in accordance with normal ratification procedures.

(Secs. 204 and 1001, 72 Stat. 743 and 788, 49 U.S.C. 1324 and 1481; 81 Stat. 54, 5 U.S.C. 552)

[OR-102, 41 FR 20653, May 20, 1976]

§ 384.4 Offices.

The central offices of the Civil Aeronautics Board are located in the Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., and in the Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C. Its mailing address is Civil Aeronautics Board, Washington, D.C. 20428. The hours of business for the central offices are 8:30 a.m. to 5 p.m. The Board maintains field offices in Anchorage, Alaska (8 a.m. to 4:30 p.m.); Des Plaines, Illinois (7:30 a.m. to 4 p.m.); Fort Worth, Texas (8:30 a.m. to 5 p.m.); Los Angeles, California (7:30 a.m. to 4 p.m.); Miami, Florida (8:30 a.m. to 5 p.m.); New York, New York (8:30 a.m. to 5 p.m.); San Mateo, California ((8 a.m. to 4:30 p.m.); and Seattle, Washington (8 a.m. to 4:30 p.m.). All hours of business are local time, Monday through Friday, excluding legal holidays, unless otherwise provided by statute or Executive order.

[OR-118, 42 FR 32228, June 24, 1977]

§ 384.5 Public hearings.

Public hearings and oral arguments before the Board on applications and petitions in economic proceedings are held at the time and place announced in the notice thereof which is served on the parties to the Proceedings and published in the FEDERAL REGISTER.

§ 384.6 Formal submissions.

All formal submissions required or permitted to be made in economic proceedings should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, unless specifically provided otherwise in the provision requiring or permitting such submission. Requirements as to the form and content of such submissions are set forth in the Board's Procedural Regulations in this chapter of this Title 14 of the Code of Federal Regulations. Other instructions concerning the use of forms, and the scope or content of material required or permitted to be filed or maintained are set forth in the Board's Economic, Special, and Procedural Regulations, and its Policy Statements, in this chapter of this Title 14 of the Code of Federal Regulations. If the form of any document required or permitted to be filed is not prescribed, such document shall be in letter form. Any other request of the Board of any kind shall be directed to the Secretary.

§ 384.7 Organization and delegation of authority.

The five Board Members, one of whom is the Chairman and presiding officer, act to carry out the duties and responsibilities of the Civil Aeronautics Board under the Federal Aviation Act. The Board's staff is divided into several bureaus and offices, which are generally described below. A detailed description of the Board and its components is published in sections 110-195 of the CAB Manual, which is available for inspection and copying in the Public Reference Room at the Board's offices. The various continuing delegations of authority from the Board to the different staff components which are adopted by rules, are described in detail in this Title 14 of the Code of Federal Regulations, Part 385 of this chapter. Generally speaking, the Board's staff comprises:

(a) The Office of the Managing Director, which assists the Chairman in the discharge of his functions as executive and administrative head of the agency; coordinates and directs the activities of the staff; and recommends and develops plans to achieve the Board's program objectives. Within the Office of the Managing Director or reporting to the Managing Director are:

(1) The Office of Information, which is responsible for keeping the public and the air transport industry advised of major actions of the Board, and for serving as the primary channel through which inquiries from the public, the press, or the industry are answered.

(2) The Office of Congressional, Community, and Consumer Affairs, which represents the Board in dealing with representatives of state and local communities and civic groups; identifies community interests and develops recommendations of Board policies and actions relating thereto; maintains liaison between the Board and Congress; insures that the consumer perspective is represented in all matters considered by the Board; operates programs and provides services to inform and educate consumers in their contacts with the air transportation industry; handles consumer complaints and mediates them where possible.

(3) The Office of the Comptroller, which administers the Board's financial management system, including participation in the fundamental aspects of program development, execution, review and evaluation; performs fiscal and administrative accounting activities, including those relating to the budget and the payroll, administers subsidy payment functions, administers and operates the Board's automatic data processing facilities, controls the receipt of data submitted to the Board; designs, develops, implements, and evaluates the Board's information processing and resource management systems; establishes the

need for economic, financial, and statistical information in support of regulatory analysis and decision-making; and prescribes the Board's reporting requirements.

(4) The Office of Facilities and Operations, which is responsible for the provision of facilities and central operating and support services essential to the efficient and effective conduct of operations throughout the agency. The general Services Section within this Office deals with acquisition, planning and assignment of office space, procurement and supply. Also contained within this Office are the Communications Services Section, which maintains the Board's internal directives system and central files system; and is concerned with records and paperwork management. The Records Services Section maintains records on air carrier authorities, schedules, route maps and mileages, and air carrier financial and operational statistical reports; it also maintains a Public Reference Room for use of the public in examining Board material. The Publications Services Section, which distributes public documents issued by the Board, and the Library are also included within this Office.

(5) [Reserved]

(6) The Office of Personnel, which administers a personnel program designed to meet the needs of the Board and its employees and administers the agency' security programs.

(7) [Reserved]

(8) The Office of Equal Employment Opportunity, which is charged with implementation of the following Board policy: (i) To afford all persons equal opportunity in employment by the Board, without regard to race, color, religion, sex, or national origin; and (ii) to promote the full realization of equal employment opportunity through a continuing affirmative program in all areas of the Board. The Office is under the direction of a Director of Equal Employment Opportunity who is designated by the Chairman and operates under his immediate supervision.

(b) The Office of the Secretary, which functions as a clearing house and repository for Board documents. It receives, records, files, distributes and serves copies of official docket material and records; performs the functions involved in processing material from the staff requiring action by the Board; records Board actions; issues, digests and indexes official documents evidencing such actions; and authenticates Board records for any official purpose. Pursuant to the Federal Aviation Act of 1958, the Secretary has legal custody of records and documents as specified therein.

(c) The Bureau of Domestic Aviation, which is the Board component involved in domestic and overseas ratemaking, licensing, and the maintenance of proper competitive conditions among air carriers. This Bureau handles matters involving commercial passenger, baggage, and freight rates, service mail rates, subsidy rates, and military charter rates. It also handles domestic air transportation matters involving certificates, exemptions, and mergers for scheduled, charter, helicopter, and all-cargo air carriers, air taxi operators, and freight forwarders. Special tariff permission applications involving foreign air transportation are coordinated with the Bureau of International Aviation.

(d) [Reserved]

(e) The Bureau of Carrier Accounts and Audits, which is responsible for serving as the principal accounting policy and program advisor to the Board on all substantive and procedural matters related to air carrier audits, internal audits, and industry accounting transactions and systems, and for providing investigative assistance to other CAB bureaus and offices. This Bureau develops and administers the Board's industry accounting systems; conducts industry audits and examinations of air carrier accounts and records; performs technical staff work in analyzing financial reports or documents used in proceedings requiring expertise in accounting or auditing matters; provides advice on accounting and auditing aspects relevant to monitoring compliance with continuing fitness requirements; and conducts investigations of alleged violations of the Act and the Board's regulations to uncover unfair consumer practices and unfair methods of competition. This

Bureau also provides internal audit coverage over all funds, property, and other assets for which the Board is responsible, and provides information and advice concerning carrier compliance records and compliance disposition.

(f) [Reserved]

(g) The Bureau of International Aviation, which is the Board component primarily concerned with the licensing and maintenance of proper competitive conditions among air carriers and foreign air carriers and ratemaking with respect to foreign air transportation. Matters involving certificates, permits, and exemptions for scheduled, supplemental, and all-cargo air carriers, foreign air carriers, and air taxi operators pertaining to foreign air transportation are handled by the Bureau of International Aviation. This Bureau advises the Board on the formulation of positions to be taken by the United States concerning international air transport matters; serves as liaison between the Board and the Department of State and the Interagency Group on International Aviation; and provides representation in connection with international conferences, consultations and negotiations with foreign countries on air transport matters. Special tariff permission applications involving foreign air transportation are coordinated with the Bureau of Domestic Aviation.

(h) The Bureau of Administrative Law Judges, which provides administrative law judges for the conduct of all formal proceedings under Titles IV and X of the Federal Aviation Act, including those for issuance of certificates of public convenience and necessity concerning both domestic and foreign operations, and issuance of foreign air carrier permits; mail, property, and passenger rate cases; mergers, acquisitions of control, and interlocking relationships; and economic enforcement cases.

(i) The Office of the General Counsel, which is responsible for advising the Board, its staff, industry representatives, and the public on legal aspects of the Board's regulatory activities; representing the Board in litigated matters; assisting attorneys in other offices and bureaus as required; representing the Board in negotiations and at conferences where legal matters are involved; representing the Board on Government committees and committees of international organizations; and, through the Enforcement Division under the sole supervision of the Deputy General Counsel, promoting observance of the Federal antitrust laws, the economic provisions of the Federal Aviation Act, and the Board's orders, regulations, and other requirements.

(j) The Office of Economic Analysis, which is reponsible for studying demands for air transportation under various conditions of price and service, and forecasting future demand; advising the Board and staff on the economic impact of Board actions, and on the financial structure and conditions of individual air carriers and the industry in general; providing economic counsel, analysis and testimony in Board proceeding; assisting in the development of economic recommendations about U.S. international aviation relations and general regulatory policy; and working with other agencies and departments on economic matters related to airline deregulation.

(Sec. 1001, 72 Stat. 788, sec. 4, 80 Stat. 383; 49 U.S.C. 1481; 5 U.S.C. 553; sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note); secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, as amended (49 U.S.C. 1324(a), 1377) Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; (49 U.S.C. 1324 (note))

[OR-20, 32 FR 8797, June 21, 1967]

EDITORIAL NOTE: For FR citations affecting § 348.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 384.8 Availability of information and materials.

The Board publishes a regulation in Part 310 of its Procedural Regulations in this chapter concerning the availability for inspection and copying of Board orders, opinions, and records. That regulation states in detail what information is available at the Board, and what records may be inspected, and discusses the use of the Board's

Public Reference Room. Generally speaking:

(a) The Board maintains a Public Reference Room in which are kept copies of Board opinions (including concurring and dissenting opinions), orders, regulations, rules of practice, statements of policy, and interpretations of general applicability, the Public Index to Board materials, the CAB Manual, certain financial reports and data filed by air carriers, and copying facilities. The records of the proceedings in formal cases are kept in the Board's Docket Section. The Board's Library maintains legal reference books, regulatory commission reports, texts, and treaties on air transport and other transport economics, and a wide variety of other books and publications concerning civil air transport and related fields.

(b) The regulations, policy statements, and rules of practice of the Board are published in this Title 14 of the Code of Federal Regulations. They may also be inspected and copied in the Board's Public Reference Room, or purchased from the Superintendent of Documents, Government Printing Office.

(c) The CAB Manual is a book of rules and instructions to the Board's staff on how to deal with various matters involving the Board's business with the public. It also contains a detailed description of the Board's organization and the responsibilities of each staff component. The CAB Manual may be inspected and copied in the Board's Public Reference Room.

(d) The Publications Services Section periodically prepares a list of Board documents and publications which have been duplicated and are available to the public. Items offered for sale are available from the Superintendent of Documents, Government Printing Office, or other indicated sources on payment of a charge therefor. A list of available publications and free single copy items is available from the Publications Services Section upon request. The weekly "Notice of Applications or Amendments Thereto" and certain other publications are available to persons submitting written request therefore and payment of any prescribed fees to the Publications Services Section.

(e) A list of forms (described and identified by number) which the Board uses in dealing with the public is available in the Board's public reference room. Both the list of forms, which is subject to change and is therefore not published herein, and the forms themselves are available from the Board's Publications Services Section.

(f) Various other materials and records are available at specific offices within the Board as specified in Part 310 of this chapter.

[OR-20, 32 FR 8797, June 21, 1967, as amended by OR-38, 34 FR 7651, May 14, 1969; 34 FR 7900, May 21, 1969; OR-65, 37 FR 18909, Sept. 16, 1972; OR-74, 38 FR 16218, June 21, 1973]

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

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385.51 Petitions for review.
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AUTHORITY: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Pub. L. 98-443, October 4, 1984, unless otherwise noted.

SOURCE: Docket No. T-1, 49 FR 50985, Dec. 31, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 385.1 Definitions.

"Act" means the Federal Aviation Act of 1958, as amended.

"Board" means the Civil Aeronautics Board.

"Department" mean Department of Transportation.

"Petition for review" means a petition asking the appropriate Reviewing Official to exercise his or her discretionary right of review of staff action.

"Precedent" means applicable judicial decisions and decisions by the Department, or by the Board where consistent with Department policy.

"Reviewing Official" means the Assistant Secretary for Policy and International Affairs, the Assistant Secretary for Governmental Affairs, the Assistant Secretary for Administration, the General Counsel, or the Administration of the Research, and Special Programs Administration, as appropriate to the subject matter under review, but not with regard to Deputy General Counsel and Administrative Law Judge decisions made under this part.

"Staff action" means the exercise of a function under Title IV or X of the Act by a staff member pursuant to assignment under this part.

"Staff members" means officers and employees of the Department who are assigned authority under this part.

§ 385.2 Applicability.

This part describes the organization of the Department insofar as, pursuant to authority conferred on it by section 204 of the Federal Aviation Act, the Department has adopted rules herein or elsewhere which make continuing assignments of authority with respect to any of its functions of making orders or other determinations, many of which are not required to be made on an evidentiary record upon notice and hearing or which are not the subject of contest, and Department personnel have been assigned to perform such functions. Delegations by the Secretary of Transportation to Secretarial Officers and the Administrator, Research and Special Programs Administration (RSPA) of functions under Titles IV and X of the Act appear in 49 CFR Part 1. This part also sets forth the procedures governing discretionary review by the appropriate Reviewing Official of action taken under such assignments. Nothing in this part shall be construed as precluding the Department from issuing, by appropriate order, temporary delegations of authority with respect to any functions described in this part or with respect to any other functions which can be lawfully delegated.

§ 385.3 Scope of staff action.

Applications for relief which, pursuant to this part, may be granted by staff members under assigned authority, and proceedings on such requests shall be governed by applicable rules in the same manner as if no assignment had been made (see § 385.5). In such proceedings, each staff member may determine any procedural matters which may arise, including, inter alia, service of documents on additional persons; filing of otherwise unauthorized documents; waivers of procedural requirements; requests for hearing; requests for additional information; dismissal of applications upon the applicant's request, moot applications, or incomplete or otherwise defective applications; and extensions of time. Such determinations, except those which would terminate the matter, shall be subject to review only in connection with review of the staff member's decision on the merits. The dismissal of incomplete or otherwise defective applications under authority set forth in this part shall be without prejudice except where under otherwise applicable law the time for making application has run out or where the defect is not corrected within a reasonable time fixed by the staff member. Under the authority assigned to the staff as set forth in this part to approve, disapprove, grant, or deny, relief may be granted or denied in part and grants may be made subject to lawful and reasonable conditions. Moreover, where applicable, the authority to grant relief also includes authority to renew or extend an existing authorization.

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub L. 98-443, Oct. 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.4 Form of staff action.

Unless otherwise specified, staff action shall be by order or informal writing (letters, telegrams, decision marked on copy of application form, etc.). Such orders or informal writings shall contain a recital that action is taken pursuant to authority assigned herein, shall, in cases where there are "parties or interveners," or where there may be an adverse effect upon a person with a substantial interest, contain a brief reference to the right of aggrieved parties to petition the Reviewing Official for review pursuant to applicable procedural rules, including a statement of the time within which petitions must be filed (§ 385.51); shall state whether the filing of a petition shall preclude the action from becoming effective; and shall be in the name of the person exercising the assigned function. They shall contain all findings, determinations and conclusions which would be required or appropriate if they were issued by the Secretary. Upon request, the appropriate Department Official shall attest as Departmental action orders or informal writings issued pursuant to this part which have become the action of the Department (§ 385.52).

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub L. 98-443, Oct 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.5 Procedures prescribed in other regulations.

Procedures set forth in this part do not supersede procedures applicable to matters on which decision has been assigned unless otherwise specifically provided herein: *Provided, however,* That any provisions in other regulations which provide for reconsideration of nonhearing determinations are not applicable to decisions made under authority assigned herein or to decisions made upon review thereof by the Reviewing Official.

§ 385.6 Referral to the Reviewing Official.

When the staff member finds that the public interest so requires, or that, with respect to other than matters requiring immediate action as hereafter specified, there will be insufficient time for discretionary review of his or her decision upon petition, the staff member shall, in lieu of exercising the authority, submit the matter to the Reviewing Official for decision. In any case in which the staff member finds that immediate action is required with respect to any matter assigned herein, the disposition of which is governed by prior precedent and policy, the staff member may take appropriate action and specify that the filing of a petition for review shall not preclude such action from becoming effective.

§ 385.7 Exercise of authority by superiors.

Any assignment of authority to a staff member other than the Chief Administrative Law Judge, the Administrative Law Judge, and the Deputy General Counsel, shall also be deemed to be made, severally, to each such staff member's respective superiors. In accordance with the Department's principle of management responsibility, the superior may choose to exercise the assigned power personally. Moreover, the Secretary may at any time exercise any authority assigned herein.

§ 385.8 Exercise of authority in "acting" capacity.

Unless the assignment provides otherwise, staff members serving in an "acting" capacity may exercise the authority assigned to the staff members for whom they are acting.

Subpart B—Assignment of Functions to Staff Members

§ 385.10 Authority of Chief Administrative Law Judge, Office of Hearings.

The Chief Administrative Law Judge has authority to:

(a) Consolidate, upon recommendation of the Director, Office of Aviation Operations (or such staff member of the Office of Aviation Operations as he or she may designate), into one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

(b) With respect to matters to be decided after notice and hearing: (1) Dismiss applications or complaints (except those falling under Subpart B of Part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint; (2) dismiss proceedings upon his or her finding that the proceeding has become moot or that no further basis for continuation exists; and (3) dismiss an application subject to dismissal as stale under Part 302 of this chapter.

§ 385.11 Authority of the Administrative Law Judges, Office of Hearings.

The Administrative Law Judges, Office of Hearings, have authority to take the following actions in matters to which they are respectively assigned:

(a) Grant or deny intervention in formal proceedings.

(b) With respect to matters to be decided after notice and hearing, dismiss applications or complaints (except those falling under Subpart B of Part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint.

(c) Grant requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under § 302.215 of this chapter.

§ 385.12 [Reserved]

§ 385.13 Authority of the Director, Office of Aviation Operations.

The Director, Office of Aviation Operations, has authority to:

(a)(1) Approve or deny applications of certificated route air carriers for exemptions to perform single flights outside the authority contained in their certificates.

(2) Approve, when no person disclosing a substantial interest protests, or deny applications of certificated route air carriers for exemptions to perform any other operation prohibited by a term, condition, or limitation in a certificate.

(b)(1) Approve or deny applications of air carriers for exemptions from section 401 of the Act and from applicable regulations under this chapter where the course of action is clear under current precedent or policies.

(2) Grant or deny requests for exemption from section 403 of the Act, where grant or denial of the request is

in conjunction with and incident to requests for authority under paragraph (b)(1) of this section.

(c) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.

(d) Waive the provisions of § 377.10(c) of this chapter with respect to the time for filing applications for the renewal of temporary authorizations so as to permit their filing within shorter periods than required by that section when, in the Director's judgment, the public interest would be served, except that the interim extension provisions of § 377.10(d) of this chapter shall, if otherwise pertinent, apply to authorizations involved in applications filed pursuant to such waivers.

(e) With respect to applications filed under section 401 of the Act for authority to engage in interstate or overseas air transportation that are either accompanied by a petition for an order to show cause, or requests show-cause treatment or the use of expedited procedures under Subpart Q of Part 302 of this chapter, and can be handled by show-cause orders:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and the applicant has already been found fit, willing and able by the Department to provide service of the same basic scope and character;

(2) Issue an order stating the Department's intention to process the application through show-cause procedures; and

(3) Issue an order to make final an order to show cause issued under paragraph (1) of this subsection, where no objections to the order to show cause have been filed.

(f) Grant or deny requests for waiver of Parts 207, 208, 212, 372, and 380 of this chapter, where grant or denial of the request is in accordance with established precedent.

(g) Approve or disapprove escrow agreements filed pursuant to §§ 207.17, 208.40, and 212.15, respectively, as security for customers' deposits made with such carriers and advance payment for charter flights.

(h) Reject or accept Public Charter prospectuses in accordance with § 380.25.

(i) Approve or deny applications of air carriers for exemptions from the provisions of section 405(b) of the Act and § 231.5(b) of Part 231 of this chapter, to the extent necessary to permit the filing of schedules pursuant to section 405(b) on less than ten (10) days' notice to the Postmaster General and to the Department.

(j) Approve or deny applications for exemption from section 403 of the Act to the extent necessary to permit performance of air carrier operations otherwise authorized by exemption, granted under paragraphs (a)(1) and (a)(2) and paragraph (b) of this section.

(k) [Reserved]

(l) Grant or deny, in accordance with established precedent, applications for relief, under section 101(3) of the Act, to hold out, arrange, and coordinate the operation of air ambulance flights as indirect air carriers.

(m) When a work stoppage appears imminent, and during an actual work stoppage, approve or deny applications to provide substitute service during the work stoppage, made under section 416(b) of the Act for temporary exemptions from sections 401, 402, or 403. The exemption or authorization shall impose conditions as necessary to comply with precedent on emergency air transportation requirements. Such applications may be approved if it is shown that the proposed service will not interfere with scheduled passengers holding reservations on scheduled or charter service, and that the proposed service is consistent with the policies set forth in Order 78-4-83, dated April 14, 1978. Exemptions and authorizations granted under this authority shall be contingent upon the actual occurrence of a work stoppage and shall expire not later than 5 days after the affected carrier resumes normal service.

(n) With respect to an application under section 401 of the Act for a certificate to engage in interstate, overseas, or foreign scheduled air transportation or to engage in interstate, overseas, or foreign charter air transportation, issue an order instituting an investigation of the applicant's fitness and other issues related to the application, where no person has already filed an objection to the application and the investigation will be conducted by oral hearing procedures.

(o) Reject any tariff, supplement, or revised page which is filed by any U.S. air carrier or by any foreign air carrier, and which is subject to rejection because it is not consistent with section 403 of the Act or with Part 221 or 222 of this chapter (Economic Regulations). Where a tariff, supplement or loose-leaf page is filed on more than 60 days' notice and is not rejected within the first 30 days commencing with and counting the filing date, it shall not be rejected after such 30-day period under this authority unless the issuing carrier or agent is given an opportunity to remove the cause for rejection by the effective date, upon Special Tariff Permission if necessary, and fails to take such corrective action.

(p) Approve or disapprove any application for permission to make tariff changes upon less than statutory notice, filed pursuant to § 221.190 of this chapter (Economic Regulations).

(q) Approve or disapprove applications for waiver of Part 221 of this chapter (Economic Regulations) in accordance with § 221.201 of this chapter.

(r) Permit cancellation of a tariff in instances when an investigation of a tariff is pending, or the tariff is under suspension, or when a complaint requesting investigation or suspension of a tariff has been filed.

(s) In instances when an investigation of a tariff is pending, or the tariff is under suspension, or where a complaint requesting investigation or suspension of a tariff has been filed, dismiss the investigation or complaint, or terminate the suspension, provided the tariff to which such investigation, complaint or suspension relates has been canceled, ordered canceled, modified so as to remove the grounds for the investigation or complaint, or has expired.

(t) Institute an investigation of, or institute an investigation and suspend the effectiveness of, a tariff or change in a tariff which:

(1) Is substantially similar to a prior tariff under investigation or suspension; and

(2) Is filed by or on behalf of one or more of the carriers party to the prior tariff; and

(3) Is filed within 90 days after the expiration, modification, or cancellation of the prior tariff, or within 90 days after the effective date of an order requiring its cancellation or modification.

(u) Extend the period of suspension of a tariff under suspension when the proceedings concerning the lawfulness of such tariff cannot be concluded before the expiration of the existing suspension period: *Provided*, That the aggregate of such extensions may not be for a longer period than permitted under section 1002(g) of the Act.

(v) Grant or deny to a carrier an exemption and/or one extension thereof, pursuant to section 416(b)(1), from the provisions of section 403(b) insofar as the latter section would prevent the carrier from providing free transportation for the purposes of engaging in technical in-flight observations necessary or desirable for meteorological purposes or in other cases substantially similar to cases previously acted upon by the Department, *Provided* that:

(1) The free transportation is limited to technical personnel regularly engaged in duties directly related to the purposes for which the free transportation is authorized and is provided only when they are engaged in the specific technical in-flight activity and does not include other transportation;

(2) The exemption or the subsequent single extension thereof shall be for a period not to exceed 6 months; and

(3) The exemption shall be granted only upon the condition that the carrier file with the Department, within 10 days after the close of each month, during which the exemption is in force, the name of each person provided free transportation thereunder, his or her company affiliation and the dates, flights, and points between which such free transportation was provided.

(w) Approve or deny applications for Special Tariff Permission filed under § 221.195 of this chapter to allow carriers to provide reduced passenger fares before filing a tariff.

(x) Issue show cause orders proposing (1) to establish service mail rates for air taxi operators, and (2) to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(y) Issue final orders establishing temporary and final service mail rates (1) in those cases where no objection has been filed following release of the show cause order, and where the rates established are the same as those proposed in the show cause order, and (2) in those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show cause order.

(z) Issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(aa) Issue a letter, in the case of air mail contracts filed with the Board under 14 CFR 302.1501 through 302.1508 against which no complaints have been filed, stating that the contract will not be disapproved by the Department and may become effective immediately. The letter will state that it is issued under assigned authority and may be appealed to the Assistant Secretary for Policy and International Affairs by any person.

(bb) Approve or deny applications of certificated route air carriers for exemptions to serve a point certificated on one segment of its route in place of a point certificated on another section of its route whenever at least one of these points is outside the United States and no substantial competition to other lines will result.

(cc) Grant or deny applications of foreign air carriers for exemptions from section 402 of the Act and from applicable regulations under this chapter, relating to operations that are in foreign air transportation, where the course of action is clear under current precedent or policies.

(dd) Grant or deny applications for exemption from section 403 of the Act to the extent necessary to permit performance of air carrier or foreign air carrier operations otherwise authorized by exemption granted under paragraphs (bb) and (cc) of this section.

(ee) Approve or disapprove issuance of foreign aircraft permits provided for in §§ 375.41, 375.42, and 375.70 of this chapter (Special Regulations).

(ff) Approve or disapprove interchange schedules involving points outside the United States. Approvals may be granted when such schedules appear to conform to the service plan contemplated by the Department's orders approving the basic interchange agreements.

(gg) For air carrier operations that are predominantly in foreign air transportation and for foreign air carrier operations, grant or deny applications for authorizations to conduct charter trips for which prior approval is required under (1) any provision of this chapter or (2) an order of the Department. This shall include authority to waive a time limitation for advance filing of an application prescribed in any such order.

(hh) Grant or deny applications of foreign air carriers for a change of name or for permission to use a trade name pursuant to Part 215 of this chapter.

(ii) Issue revised Exemption Orders involving service predominantly in foreign air transportation, when revisions thereof are made necessary due to a change in name of the carrier specified in the document: *Provided*, That no issue of substance concerning the operating authority of a carrier is involved.

(jj) Approve issuance of Special Authorizations provided for in § 216.4 of this chapter (Economic Regulations), when no person disclosing a substantial interest objects.

(kk) Issue orders directing the holders of foreign air carrier permits to show cause why the Department should not adopt provisional findings and conclusions that such permits should be canceled when:

(1) The government of the permit holder's home country represents that it has no objection to cancellation of the permit and

(2) Either (i) the permit holder has ceased operations, or (ii) the permit

holder no longer holds authority from its own government to operate the routes designated in its permit.

(ll) Approve or disapprove wet leasing arrangements involving service predominantly in foreign air transportation.

(mm) Grant or deny applications of foreign air carriers for authorizations provided for in foreign air carrier permits, or for waivers of limitations contained in foreign air carrier permits, where no person disclosing a substantial interest objects, or where the course of action is clear under current precedent or policies.

(nn) With respect to air carrier authority to conduct a specific charter operations, other than a MAC operation, when the operation is predominantly in foreign air transportation:

(1) Grant or deny an air carrier such authority, imposing such conditions as exclusion of one-way passengers or limitations on payments for labor in arranging the charter; and approve or disapprove minor changes prior to flight date in charters previously authorized by order (e.g., changes regarding flight dates, departure or landing points, aircraft, persons authorized for one-way passage, intermingling of passengers, or substituting another carrier in cases of emergency).

(2) Grant or deny requests for exemption from section 403 of the Act, where grant or denial of the request is in conjunction with an incident to requests for authority under paragraph (nn)(1) of this section.

(oo) Approve or disapprove requests by foreign air carriers for waivers of the 30-day advance filing requirement for proposed service schedules whose filing the Department has ordered under § 213.3 of this chapter.

(pp) Approve or disapprove requests by foreign air carriers for authority to operate additional flights for up to a 30-day period where an agreement, permit, or order requires prior Department approval of the flights.

(qq)(1) Approve applications for registration filed under Part 297 of this chapter, or require that a registrant under Part 297 submit additional information, or reject an application for registration for failure to comply with Part 297.

(2) Cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) Grant or deny requests by foreign air freight forwarders or foreign cooperative shippers associations for permission to deviate from the documentation requirements of § 297.32 of this chapter (Economic Regulations). Such requests will be granted upon a showing that the record retention system of the forwarder permits ready access to information otherwise required on a manifest; that the name of the person determining rates and charges, together with the commodity rate applied, appears on the airwaybill; that the forwarder will provide copies of airwaybills to the consignor or consignee when either so requests; and that the recordkeeping operations of the forwarder otherwise comport with the policy set forth in Order E-19074 of December 7, 1962.

(4) Exempt the registrant from the requirement contained in § 297.20 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(rr)(1) Approve (with or without condition) or reject applications for registration filed under Part 294 of this chapter, or require that an applicant under Part 294 submit additional information.

(2) Cancel, revoke, or suspend the registration of any Canadian charter air taxi operator using small aircraft registered under Part 294 of this chapter that:

(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 402 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are (A) citizens of Canada, (B) the Government of Canada, or (C) a combination of both; or

(vi) No longer holds current effective operational specifications issued by the FAA.

(3) Grant or deny requests for a waiver of Part 294 of this chapter, where grant or denial of the request is in accordance with current precedent or policy.

(ss) With respect to applications filed under sections 401 and 402 of the Act for authority to engage in foreign air transportation:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed and where the applicant has already been found by the Board to be fit, willing and able to provide service of the same basic scope and character;

(2) Issue an order stating the Board's intention to process the application through show cause or other expedited procedures, where the course of action is clear under precedent or policy;

(3) Issue an order, subject to Presidential review under section 801(a) of the Act, finalizing an order to show cause issued under paragraph (ss)(1) of this section where no objections to the order to show cause have been filed.

(tt) With respect to an application filed under section 401 or 402 of the Act for authority to provide foreign air transportation and with respect to which an order instituting an oral evidentiary hearing has not been issued:

(1) Dismiss the application when dismissal is requested or consented to by the applicant.

(2) Dismiss the application when it has become moot.

(uu) Grant or deny applications of foreign air carriers for renewal of exemptions granted pursuant to section 416(b)(7) of the Act.

(vv) With respect to the procedures for the registration of foreign charter operators under Subpart F of Part 380 of this chapter:

(1) Approve the registration application under § 380.64(a)(1);

(2) Reject the registration application under § 380.64(a)(4);

(3) Request additional information from the applicant under § 380.64(a)(2);

(4) Notify the applicant under § 380.64(a)(3) that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Policy and International Affairs for formal action;

(5) Cancel the registration of a foreign charter operator under § 380.66(a) if it files a written notice with the Department that it is discontinuing its charter operations;

(6) Waive provisions of Subpart F of Part 380 of this chapter under § 380.69.

(ww) With respect to the procedures for awarding Japan charter authorizations under Part 320 of this chapter:

(1) Establish procedures for, and hold, lotteries;

(2) Award the charter authorizations;

(3) Assess penalties as described in Part 320;

(4) Extend the period for filing the required reports.

(xx) Grant or deny, or ask for additional information about, applications by or on behalf of foreign air carriers, when filed under § 389.24 of this chapter, for waiver of the Department's filing fee requirements, in accordance with policy and precedent.

(yy) Issue Fitness Certificates and Certificates of Public Convenience and Necessity when revisions thereof are necessitated by a change in the name of the carrier or of points specified in the certificate: *Provided*, That no issue of substance concerning the operating authority of a carrier is involved.

(zz) Issue foreign air carrier permits when revisions thereof are necessitated by a change in the name of the carrier or of points specified in the permit: *Provided*, That no issue of substance concerning the operating authority of a carrier is involved.

(aaa) Review Federal Aviation Administration reports on the safety of newly certificated air carriers, and

(1) Amend orders issuing certificates to advance the effective dates of the

certificate if the review is satisfactory, or

(2) Stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory.

(bbb) Approve or disapprove applications filed under section 403(b) of the Act and § 223.8 of this chapter for permission to furnish free or reduced rate air transportation in foreign air transportation.

(ccc) With respect to International Air Transport Association (IATA) agreements filed with the Department pursuant to section 412 of the Act or pursuant to Civil Aeronautics Board Order E-9305 of June 15, 1955:

(1) Disclaim jurisdiction with respect to IATA agreements which do not affect air transportation within the policy set forth in Civil Aeronautics Board Order E-12304, dated March 31, 1958;

(2) Approve agreements which do not directly apply in air transportation;

(3) Issue orders approving, disapproving, or approving subject to conditions, IATA agreements relating to fare and rate matters, with respect to the following:

(i) Agreements naming additional specific commodity rates (rates below general cargo rates) under new, existing, or amended descriptions; amending descriptions; and/or extending or canceling existing specific commodity rates.

(ii) Agreements reached by unprotested notice pursuant to previously approved resolutions.

(iii) Agreements establishing or amending proportional or constructed fares or rates.

(iv) Agreements naming specified fares or rates to be integrated into previously approved fare or rate structures.

(v) Agreements amending or extending application of construction rules.

(vi) Agreements amending application of special (reduced) fare resolution provisions.

(vii) Agreements providing for delays in inaugurals.

(viii) Agreements establishing, amending, or terminating charges for nontransportation services and other ancillary fare or rate agreements involving administrative, procedural, or technical provisions, not affecting fare or rate levels.

(ix) Agreements establishing, amending, or terminating a surcharge or discount on foreign-originating air transportation to reflect a currency fluctuation.

(4) Issue orders describing filed agreements, establishing procedural dates for submission of justification, comments and replies, which support or oppose agreements, and prescribing the particular types of data to be included in such submission.

(ddd) Approve or disapprove air carrier applications involving foreign air transportation filed under section 416(b) of the Act for exemption from section 403 of the Act, air carrier tariffs, and applicable Department regulations, in cases where the disposition of the application is governed by established policy and precedent. Such approval or disapproval may be taken by order, by letter, or by stamp or notation on a copy of the application.

(eee) Approve or disapprove applications requesting relief from requirements of Department orders that carriers file data relating to experience under new foreign rates and fares.

(fff) Approve or prove applications for permission to furnish free or reduced-rate foreign air transportation to commissioned and enlisted military personnel when on official business of an air carrier to which they have been assigned for educational training purposes.

(ggg) Cancel the suspension of and/or dismiss an investigation of a tariff relating to service predominantly in foreign air transportation:

(1) When subsequent adjustments to the Standard Foreign Fare Level made pursuant to section 1002(j)(9) of the Act, or subsequent increases in the applicable range of fare flexibility have rendered the suspension and/or investigation moot; or

(2) Where the course of action is clear under current policy and precedent.

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984

(Pub L. 98-443, Oct. 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.14 Authority of the Director, Office of Essential Air Service.

The Director, Office of Essential Air Service, has authority to:

(a) Establish procedural dates in essential air service proceedings.

(b) Issue orders under § 324.3(a) and § 324.9 of this chapter setting interim rates of compensation for carriers required to provide essential air transportation to eligible points, subject to adjustment by the Assistant Secretary for Policy and International Affairs upon review.

(c) Issue orders approving a carrier's alternate service pattern if:

(1) The resulting level of service at the eligible point would be equal to or greater than the level of service earlier determined to be essential for that point;

(2) The community concerned does not object to the carrier's implementation of the alternate service pattern; and

(3) The carrier is not receiving a subsidy for service to the eligible point concerned or implementation of the alternate service pattern would not affect the carrier's subsidy.

(d) Issue orders adjusting the operational and/or financial unit rates of the payout formula for a carrier receiving subsidy under section 419 of the Act where the adjustment will not change the total amount of compensation that the carrier will receive.

(e) Extend the term of a carrier's subsidy rate established under section 419 of the Act, with the amount paid during the extension subject to adjustment by the Assistant Secretary for Policy and International Affairs upon review.

(f) Renew, up to five times in succession, an order under section 419(a)(6) of the Act to an air carrier to continue providing essential air transportation while the Department attempts to find a replacement carrier.

(g) Request service and subsidy proposals from carriers interested in providing essential air transportation to an eligible point which is not receiving essential air service for which no appeal of its essential air service determination is pending.

(h) Request service and subsidy proposals from carriers interested in providing essential air transportation to an eligible point when no proposals were filed in response to a previous request for proposals.

(i) Send a statement under § 324.3 of this chapter, to an air carrier, disagreeing with its application for compensation for losses under section 419, and to arrange an informal conference under § 324.4 of this chapter for the purpose of resolving these disagreements.

(j) Issue final orders establishing temporary or final subsidy rates under section 406 or 419 or final adjustments of compensation for losses under section 419 in those cases where no objection has been filed to a show cause order, and where the rates established are the same as those proposed in the approved show cause order.

(k) Issue final orders amending the reporting requirement for distribution of reported services and financial data to selected categories for the semiannual review of subsidy-eligible and subsidy-ineligible operations under the local service class subsidy rate.

(l) Issue final orders making ad hoc adjustments to individual carrier subsidy ceilings under the local service class subsidy rate for the addition, reinstatement, suspension, or deletion of subsidy-eligible communities to the carrier's route system.

(m) Dismiss applications for compensation for losses if they do not contain the information required by § 324.2(b) of this chapter, and close the case if the required information is not submitted within 90 days after the application is dismissed.

(n) Establish the amount of a carrier's fuel adjustment in accordance with a subsidy rate order adopted under section 419 of the Act that provides for such adjustments.

(o) With respect to provisions for terminations, suspensions, or reductions of service under Part 323 of this chapter:

(1) Require any person who files a notice, objection, or answer to supply additional information;

(2) Require service of a notice, objection, or answer upon any person;

(3) Accept late-filed objections or answers, upon motion, for good cause shown; and

(4) Extend the time for filing objections or answers, when the initial notice has been filed earlier than required under § 323.5.

§ 385.15 [Reserved]

§ 385.16 Authority of the Director, Office of International Aviation Relations.

The Director, Office of International Aviation Relations has authority to extend for an additional period or periods of 30 days each (to a maximum of four such extensions) the time allowed for action on a complaint filed under section 2 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1159b).

§ 385.17 Authority of the Inspector General.

The Inspector General has authority to:

(a) Require special reports, including documentation, from any air carrier regarding audits and other examinations of carrier facilities, operations, and accounting and statistical records.

(b)(1) For accounting purpose, make findings regarding the reasonable necessity for the application of the Department authority to obtain access to lands, buildings, and equipment, and to inspect, examine, and make notes and copies of accounts, records, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to regulation used to carry out titles IV and X of the Act through issuance of an appropriate order, letter, or other transmittal;

(2) Authorize one or more auditors or special agents to conduct audits, inspections, and examinations and to make notes and copies in accordance with such findings.

(c) Release to the carrier that is the subject of a financial audit the audit report and other information developed during the audit.

(d) Require submission by carriers of special statements necessary to an explanation of any carrier accounting practice.

§ 385.18 [Reserved]

§ 385.19 Authority of the General Counsel.

(a) The General Counsel has authority to:

(1) Issue proposed or final regulations for the purpose of making editorial changes or corrections in the Department's rules and regulations to carry out Titles IV and X of the Act, with the concurrence of the staff offices primarily responsible for the parts or sections involved: *Provided*, That any final regulation so issued shall have an effective date not less than 20 days after its date of publication in the FEDERAL REGISTER, and shall include a brief reference to the review procedures established in Subpart C of this part.

(2) Where a petition for review is duly filed, reverse any rulemaking action taken by him or her pursuant to paragraph (a) of this section by withdrawing a proposed or final regulation issued thereunder, in which case the petition for review will not be submitted to the Reviewing Official involved. (Such a withdrawal is not subject to the review procedures of Subpart C of this part.)

(3) Issue, upon request therefor, interpretations of facts bearing upon disqualifications of former members and employees, and Department employees under § 300.13 or § 300.14 of this chapter (Procedural Regulations).

(4) Issue orders deferring action until after oral argument on motions submitted by parties subsequent to the issuance of an Administrative Law Judge's initial or recommended decision.

(5) Reissue existing regulations for the purpose of incorporating prior amendments adopted by the Department.

(b) To the extent that a hearing case is involved, the authority assigned to the General Counsel in paragraph (a) of this section shall not be reassigned to the Deputy General Counsel or exercised by the Deputy General Counsel in the capacity of Acting General Counsel.

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub L. 98-443, Oct. 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.20 Authority of the Assistant General Counsel for Regulation and Enforcement.

The Assistant General Counsel for Regulation and Enforcement has authority to:

(a) Call public meetings in pending rulemaking proceedings,

(b) Issue a notice suspending the effective dates of final regulations issued by the General Counsel pending Departmental determination of review proceedings instituted thereon, whether by petition or upon order of the Department. (Such a notice is not subject to the review procedures of Subpart C of this part.), and

(c) Approve or disapprove, for good cause shown, requests to extend the time for filing comments on all proposed or final new or amended regulations, and requests to extend comment periods following the issuance of final rules.

§ 385.21 [Reserved]

§ 385.22 Authority of the Deputy General Counsel.

The Deputy General Counsel has authority to:

(a) Compromise any civil penalties being imposed in enforcement cases.

(b) Issue orders initiating and terminating informal nonpublic investigations under Part 305 of this chapter (Procedural Regulations).

(c) Issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specific answers to questions upon which information is deemed necessary. Special reports shall be under oath whenever the Deputy General Counsel so requires.

(d) Institute and prosecute in the proper court, as agent of the Department, all necessary proceedings for the enforcement of the provisions of the act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof. Any action taken by the Deputy General Counsel, pursuant to the authority of this section shall not be subject to the review procedures of this part.

(e) Make findings regarding the reasonable necessity for the application of the Department's authority to obtain access to lands, buildings and equipment, and to inspect, examine and make notes and copies of accounts, records, memorandums, documents, papers and correspondence of persons having control over, or affiliated with, any person subject to regulation under Titles IV or X of the Act, through issuance of an appropriate order, letter or other transmittal.

(f) Issue orders denying or granting conditional or complete confidential treatment of information supplied by any person to the Office of Aviation Enforcement and Proceedings. Confidential treatment may only be granted upon a finding that, if the information were in the Department's possession and a Freedom of Information Act (FOIA) request were made for the information:

(1) At the time of the confidentiality request, the FOIA request would be denied on the basis of one or more of the FOIA exemptions; and

(2) At any later time, the FOIA request would also be denied, absent a material change in circumstances (which may include a demonstration that the asserted exemption does not apply).

§ 385.23 Heads of Offices and Assistant General Counsels.

The heads of Offices and Assistant General Counsels have the authority to:

(a) Grant requests for permission to withdraw petitions, applications, motions, complaints, or other pleadings or documents which the respective Office has responsibility for processing where such authority has not otherwise been assigned in this regulation.

(b) Grant extensions of time for filing of documents or reports which are required to be filed by regulation or Department order and which reports or documents the respective Office has the responsibility for processing.

(c) Grant waivers of the environmental procedures set by Department order in any proceeding or portion of a proceeding dealing with environmental matters.

(d) Establish procedures on a case-by-case basis for environmental proceedings to ensure compliance with applicable law.

§§ 385.24—385.26 [Reserved]

§ 385.27 Authority of the Director, Office of Aviation Information Management, Research and Special Programs Administration.

The Director, Office of Aviation Information Management, Research and Special Programs Administration has authority to:

(a) Propose and issue amendments to the Department's reporting requirements for carrying out Titles IV and X of the Act, with the concurrence of the General Counsel and any concerned offices, when no person having a substantial interest expresses an objection to the change.

(b) Interpret the information reporting requirements used to carry out Titles IV and X of the Act.

(c) Except as authority is otherwise specifically assigned, waive any of the reporting requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.

(d) Require special reports or documentation from any air carrier under circumstances where he or she finds that such reports or documentation are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, Department officials, or another agency or component of the Federal Government.

(e) Dismiss petitions for Department or RSPA action with respect to reporting matters when such dismissal is requested or consented to by the petitioner.

(f) Grant or deny requests by air carriers for extension of filing dates for reports as specified in the Economic Regulations.

(g) Propose and issue amendments to accounting regulations to conform with generally accepted accounting principles, with the concurrence of the concerned Department officials, when no person having a substantial interest expresses an objection to the change. A thirty-day period for comments will be allowed.

(h) Propose and issue amendments to incorporate accounting interpretations into the Department's regulations used to carry out Titles IV and X of the Act with the concurrence of the concerned Department officials when no person having a substantial interest expresses an objection to the change. A thirty-day period for comments will be allowed.

(i) Propose and issue amendments of an editorial or technical nature that prescribe the content of the account structure to be maintained for the uniform accounting system used to carry out Titles IV and X of the Act with the concurrence of concerned Department officials, when no person having a substantial interest expresses an objection to the change.

(j) Interpret the accounting requirements used to carry out Titles IV and X of the Act. Except as authority is otherwise specifically delegated, waive any of the accounting requirements, after coordinating with concerned Department officials upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.

(k) Dismiss petitions for Department action with respect to accounting matters when such dismissal is requested or consented to by the petitioner.

(l) Grant or deny requests by air carriers for substitution of their own forms or adaptation of Department forms to meet special needs where Department approval of such form is required by the Economic Regulations.

(m) Grant or deny requests for confidential treatment of preliminary year-end financial reports.

(n) Grant or deny requests for use of international service segment data in accordance with the limitations on the availability of these data contained in section 19-6 of Part 241 of this chapter.

(o) Grant or deny requests for use of international origin and destination statistics in accordance with Board policy as set forth in § 399.100 of this chapter.

(p) Prescribe, in specific instances, different passenger weight standards to approximate variations in actual experience, for reporting passenger ton-miles and available ton-miles.

(q) Establish record-retention practices required to achieve conformance with regulations promulgated by the Board.

(r) Interpret the record-retention requirements used to carry out Titles IV and X of the Act.

(s) Waive any of the record-retention requirements as warranted, consistent with the provisions of Part 249 of this chapter.

(t) Grant or deny requests for individual air carrier fuel data in accordance with the limitations on the availability of these data contained in paragraph (k) of the reporting instructions for Schedule P-12(a), which are contained in section 24 of Part 241 of this chapter.

(u) Grant or deny requests for individual air carrier financial data in accordance with the limitations on the availability of these data contained in paragraph (d) of the reporting instructions for schedule F-1, which are contained in § 298.62 of this chapter.

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub L. 98-443, Oct. 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.28 Authority of the Director, Office of Administrative Operations.

The Director, Office of Administrative Operations, has authority to:

(a) Grant or deny applications under § 389.27(b) of this chapter for refunds of fees paid, consistent with DOT policy, and to order amounts refunded as necessary.

(b) Send notices of claim and other communications to a debtor under Part 316, and to impose and to waive interest and other charges and to settle claims by compromise with the concurrence of those Board officials specified in § 316.9(b) of the chapter, in accordance with Board policy and precedent.

(c) Pay from appropriated funds all properly documented claims consistent with Treasury, OMB, GAO, and DOT policies.

(d) Make minor or routine adjustments to payments based on audit reports prepared by the Inspector General, and through routine internal examinations of claims and vouchers.

(e) Design air carrier subsidy claim forms.

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub L. 98-443, Oct. 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.29 [Reserved]

§ 385.30 Authority of the Director, Office of Community and Consumer Affairs.

The Director, Office of Community and Consumer Affairs, has the authority to:

(a) With the concurrence of the General Counsel, make findings regarding the reasonable necessity for the application of the authority to inspect, examine, and make notes and copies of accounts, records, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to Department regulation, through issuance of an appropriate order, letter, or other transmittal;

(b) Recommend to the Deputy General Counsel the compromise of civil penalties in the resolution of informal consumer complaints.

[Doc. T-1, 49 FR 50985, Dec. 31, 1984, as amended at 50 FR 52439, Dec. 24, 1985]

Subpart C—Procedure on Review of Staff Action

§ 385.50 Persons who may petition for review.

Petitions for review may be filed by the applicant; by persons who have availed themselves of the opportunity, if any, to participate in the matter at the staff action level; and by persons who have not had opportunity to so participate or show good and sufficient cause for not having participated: *Provided*, That such persons, other than the applicant, disclose a substantial interest which would be adversely affected by the respective staff action.

§ 385.51 Petitions for review.

(a) *Time for filing.* Petitions for review shall be filed and served within ten (10) days after the date of the staff action to which they relate, but a different period may be fixed in such staff action consistent with effective preservation of the right to petition for discretionary review and the exigencies of the situation.

(b) *Contents.* Petitions for review shall demonstrate that (1) a finding of material fact is clearly erroneous; (2) a legal conclusion is contrary to law, Department rules, or precedent; (3) a substantial and important question of policy is involved; (4) a prejudicial procedural error has occurred; or (5) the staff action is substantially deficient on its face. The petition shall briefly and specifically state the alleged grounds for review and the relief sought. If persons who participated at the staff action level set forth any new facts, arguments, or other new matter, an explanation must be furnished as to why said matter was not previously adduced at the staff action level. In the absence of a valid explanation, the Department may disregard such new matter.

(c) *Form and filing.* Petitions shall comply with the form and filing requirements of §§ 302.3 (a), (b), and (c), and 302.4 of this chapter. (Rules of practice in Economic Proceedings). Petitions shall not exceed 10 pages in length. A greater length, however, may be specified in the staff action taken. The petitions shall be accompanied by proof of required service. However, persons who seek review of a civil penalty proposed by the Assistant General Counsel for Aviation Enforcement and Proceedings pursuant to § 385.22(a) may submit their request therefor by letter to the Department with a copy to the Assistant General Counsel for Aviation Enforcement and Proceedings and need not comply with the above form and filing requirements.

(d) *Service.* A petition filed by a person other than the applicant shall be served on the applicant. Petitions shall also be served on any persons who have served documents on the petitioner at the staff action level; and on such other persons as may be directed by the Department or the staff member who took the action to be reviewed.

(e) *Answers.* The applicant and such other persons as disclose a substantial interest which would be adversely affected by the relief sought in the petition may, within ten (10) days after filing the petition, file an answer thereto. A different period for the filing of answers may be fixed in the staff action. Such answers shall comply with the form and filing requirements applicable to petitions and shall be served on the applicant and any other person who has theretofore served a document in the matter on such respondent.

§ 385.52 Effective date of staff action.

Unless, within the time provided by or pursuant to this regulation, a petition for review is filed or the Department gives notice that it will review on its own motion, staff action shall, without further proceedings, be effective and become the action of the Department upon the expiration of such period. A timely petition for review filed in accordance with the provisions of this section, or notice given by the Department of review on its own motion, shall stay the staff action pending disposition by the Department, unless the Department determines otherwise or unless the staff action provides otherwise in accordance with Subpart A of this part. However, in cases where the Department's regulations provide that permissions or approvals are granted, or that other legal effects result, within a stated period from the filing with the Department of a prescribed document, unless the Department gives notice to the contrary or takes other action within said period, such notice given or action taken by a staff member under delegated authority shall toll the running of such period. A timely petition for review of staff action which is not stayed by its filing which is received after or not acted upon before the effective date of the action shall be entertained and disposed of on its merits as a petition for reconsideration.

§ 385.53 Review by the staff.

Where a petition for review is duly filed, the staff member may, upon consideration of all documents properly filed, reverse his or her decision. Except in the case of Administrative Law Judges, action taken by a staff member other than an office head or Assistant General Counsel may be reversed by the respective office head or Assistant General Counsel who is in the supervisory chain of command with respect to the staff member who took the initial action. If the initial action is reversed, the petition for review will not be submitted to the Reviewing Official. Staff action reversing the initial action shall be subject to petition for Department review as any other staff action.

§ 385.54 Decision by the Reviewing Official.

(a) *Decline of right to review.* If the Reviewing Official declines the right to exercise discretionary review, the staff action stayed by the petition for review shall become effective on the second business day following the date of service of the order, unless the order provides otherwise.

(b) *Exercise of right to review.* The Reviewing Official will exercise his or her discretionary right of review either upon petition or on his or her own motion. The Reviewing official may by order provide for interlocutory relief pending his or her decision on the merits and may limit the issues on review. The Reviewing Official may affirm, modify or set aside the staff action, may order the matter remanded, or may order further submittals or other proceedings before making a decison on the merits. In case the Reviewing Official affirms the staff action, staff action stayed by the petition for review shall become effective on the second business day following the date of service of the Reviewing Official's order, unless the order provides otherwise. Decisions by the Reviewing Official under this part are final and are not subject to petitions for reconsideration.

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, Oct. 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub L. 98-443, Oct. 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

[Doc. T-1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

PART 387—ORGANIZATION AND OPERATION DURING EMERGENCY CONDITIONS

Sec.
387.1 Purpose.
387.2 National Emergency, effective date and duration.
387.3 Offices, and information and submittals.
387.4 Organization and delegations of authority.
387.5 Board meetings.
387.6 Personnel and fiscal functions.
387.7 Effect on existing Board requirements.

AUTHORITY: Secs. 204, 1001, Pub. L. 85-726 as amended, 72 Stat. 743, 781; 49 U.S.C. 1324, 1481. Sec 201, Pub L. 94-412, 90 Stat. 1255; 50 U.S.C. 1621, Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; 49 U.S.C. 1324 (note).

SOURCE: OR-14, 30 FR 11717, Sept. 14, 1965, unless otherwise noted.

§ 387.1 Purpose.

This part describes the plan of organization and operation which will be observed by the Civil Aeronautics Board in discharging its duties and responsibilities in the event of the declaration of a national emergency by the President in accordance with the National Emergencies Act (Pub. L. 94-412).

[OR-120, 42 FR 47825, Sept. 22, 1977]

§ 387.2 National Emergency, effective date and duration.

The provisions of this part shall be come effective upon the declaration of a national emergency by the President and shall contine until terminated by concurrent Congressional resolution or by Presidential proclamation as provided in the National Emergencies Act.

[OR-120, 42 FR 47825, Sept. 22, 1977]

§ 387.3 Offices, and information and submittals.

During a national emergency:

(a) The location or headquarters of the Board, and the location of each field office of the Board, if different from the normal location, shall be as designated by the Chairman or his successor. In the absence of communication with the Chairman or his successor, the location of a field office shall be as designated by the head of that office.

(b) All formal or informal requests for information, filings, reports, or other submittals to the Board, shall be addressed to Civil Aeronautics Board, Official Mail and Messenger Service, Washington, D.C., 20428, unless otherwise specified by authority of the Board.

[OR-14, 30 FR 11717, Sept. 14, 1965, as amended by OR-120, 42 FR 47825, Sept. 22, 1977]

§ 387.4 Organization and delegations of authority.

During a national emergency:

(a) The respective functions and responsibilities of the Board, individual Board Members, and Board staff members, and the delegations of authority, shall to the extent possible be as set forth in the several parts of the Board's published regulations in Title 14 CFR, Chapter II, unless otherwise modified or revoked by authority of the Chairman, Board, or other requirements of law.

(b) In the event less than three Members of the Board are capable of acting, actions in the name and authority of the Board shall be taken by such acting Member or Members, whose authority shall mean and include the delegated authority to act for all other Members.

(c) In the event no Board Member is capable of acting, actions in the name and authority of the Board shall be taken by the following: The Managing Director; the General Counsel; the Director, Bureau of International Aviation; the Director, Bureau of Domestic Aviation. If one or more of them cannot act, their deputies or staff in line of succession as provided in paragraph (g) of this section shall act. The authority of the above designees, or their successsors, shall mean and include the designated authority to act for the Board.

(d) The authority of the Chairman, in the event of inability to act, shall be exercised by the Vice Chairman, and in the event of the Vice Chairman's inability to act, the other Members of the Board in order of seniority. If no Board Member is able to act as Chairman, then members of the Board's staff shall act as Chairman in the following order: the Managing Director; the General Counsel; the Director, Bureau of International Aviation; the Director, Bureau of Domestic Aviation; their respective deputies or staff in line of succession to the preceding staff members.

(e) Actions taken in the name and authority of the Board by less than the statutory quorum of its Members shall be effective immediately (or as specified by the Board order) but shall be subject to reconsideration by the Board within 30 days of the date upon which public notice is given that the Board has been reestablished and is functioning.

(f) If and when a Board Member, or staff member previously incapacitated or otherwise unavailable again becomes available, he shall thereupon have all the powers and functions he would have had if he had not been incapacitated or otherwise unavailable.

(g) Except as may be determined otherwise by the Chairman or his successor, the respective duties of the Managing Director shall be filled by the Executive Assistant to the Managing Director or the Comptroller in that order; the duties of the Secretary and heads of offices and bureaus, and heads of field offices, shall be discharged, in the absence or incapacity of such persons during the emergency conditions, by the available staff member next in line of succession in that office or bureau. The head of each office and bureau shall designate the line of succession within his office or bureau. If no such designation has been made, or the designee is uavailable, such duties shall be assumed by the available subordinate officer or employee in the particular office or bureau who is highest in grade and has served longest with the Board.

(Sec. 1001, 72 Stat. 788, secs. 3, 4, 81 Stat. 54, 80 Stat. 383; 49 U.S.C. 1481, 5 U.S.C. 552, 553; sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; sec. 201 of the National Emergencies Act, 90 Stat. 1255, Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note))

[OR-14, 30 FR 11717, Sept. 14, 1965, as amended by OR-142, 43 FR 59835, Dec. 22, 1978; OR-203, 47 FR 56130, Dec. 15, 1982]

§ 387.5 Board meetings.

As soon as possible following the declaration of a national emergency by the President in accordance with the National Emergencies Act, the Board or the person(s) acting in the name and authority of the Board shall designate the place, time, and method of giving notice of future Board meetings as shall be feasible and reasonable in the circumstances, subject to further order of the Board. Any Board action shall be by majority vote of those participating whether physically present or participating in Board consideration through any means of communication.

[OR-120, 42 FR 47825, Sept. 22, 1977]

§ 387.6 Personnel and fiscal functions.

Subject to modification or revocation by authority of the Chairman or his successor, authority to effect temporary appointment of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment, and services shall be exercised by the respective heads of offices and bureaus, their deputies or staff in line of succession, as may be required for the discharge of the lawful duties of the respective offices and bureaus. In the event the duly authorized Board certifying officers cannot act, then the Chairman or his successor, or employees designated by the Chairman or his successor, shall act as certifying officers.

§ 387.7 Effect on existing Board requirements.

Except as herein otherwise provided, all outstanding Board orders, rules, and regulations shall remain in force and effect during the continuance of emergency conditions, subject to all lawful requirements and such changes as may be authorized by authority of the Board.

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Subpart A—General Provisions

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AUTHORITY: Secs. 204, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

SOURCE: OR-27, 33 FR 70, Jan. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 389.1 Policy and scope.

Pursuant to the provisions of Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) as implemented by Bureau of Budget Circular A-25, dated September 23, 1959, the Board sets forth in this regulation the special services made available by the Board and prescribes the fees to be paid for these and various other services.

Subpart B—Fees for Special Services

§ 389.10 Applicability of subpart.

This subpart describes certain special services made available by the Board and prescribes the fees and charges for these services.

§ 389.11 Services available.

Upon request and payment of fees as provided in subsequent sections, there are available, with respect to documents subject to inspection, services as follows:

(a) Locating and copying records and documents.

(b) Certification of copies of documents under seal of the Board.

(c) Subscriptions to publications of the Board.

(d) Transcripts of hearings.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-94, 40 FR 7242, Feb. 19, 1975]

§ 389.12 Payment of fees and charges.

The fees charged for special services may be paid by check, draft, or postal money order, payable to the Civil Aeronautics Board, except for charges for reporting services which are performed under competitive bid contracts with non-Government firms. Fees for reporting are payable to the firms providing the services.

§ 389.13 Fees for services.

Except for photocopy work, the basic fees set forth below provide for documents to be mailed with ordinary first class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, costs therefor will be added to the basic fee. For photocopy work, postage will be in addition to the fee for copying.

§ 389.14 Locating and copying records and documents.

Public records and documents on file with the Civil Aeronautics Board will be located and copied upon request and payment of fees as set forth below:

(a) There shall be no charge in connection with searches for records or documents under this chapter.

(b) Photocopies of records or documents shall be made using the Board's facilities or by contractors.

(1) The fee for photocopying will be 15 cents per page.

(2) The fee for copying by contractors will be that established in the contracts with the Board and will be billed directly by those contractors.

(c) Copies of board data on magnetic tapes, or extractions of data from Board data tapes, will be made by the National Archives and Records Service (NARS) of the General Services Administration or by computer service bureaus.

(1) The Director, Bureau of Accounts and Statistics, furnishes many public records and documents contained on magnetic tape to NARS. Initial requests for data should be made directly to the Machine Readable Archives Division, National Archives and Records Services, General Services Administration. Washington, D.C. 20408, with the applicant directly reimbursing NARS for its copying or data extraction charges. When NARS does not have the requested data, the Director, Bureau of Accounts and Statistics, upon written request, will furnish the tapes for a reasonable length of time to a computer service bureau chosen by the applicant subject to the Director's approval. The computer service bureau shall assume the liability for the cost of replacing any tape that may be damaged or destroyed by it.

(2) The fee for data copying by NARS will be determined by NARS.

(3) The fee for data copying by a computer service bureau shall be established by agreement between the requesting party and the computer service bureau.

(d) Where the Board's fee for service requested will exceed $100, the service will not be performed until payment has been received. In such cases, the requester will be notified promptly of the amount of the fee, and the requested service will be performed as expeditiously as practicable following receipt of payment.

(e) Applications for waivers or modifications of any fees required to be paid to the Board under this section may be filed in accordance with the following:

(1) Each applicant shall set forth briefly and succinctly the relief that it seeks and the reasons why such relief should be granted. Waivers or modifications of stated fees shall be granted only where it is demonstrated that such action is in the public interest because furnishing of the information requested can be considered as primarily benefiting the general public.

(2) Applications requesting waivers or modifications of fees under this section shall be addressed to the Managing Director, who has been delegated authority by the Board to decide such applications in § 385.12 of this chapter, and shall accompany the request for service under this section.

(3) The Managing Director shall either rule on the application or, at his discretion, pass the matter on to the Board for its determination. In acting upon such applications the Managing Director and the Board, where applicable, shall be guided by the procedures and requirements of § 310.9(d) of this chapter.

(4) A decision by either the Managing Director or the Board pursuant to paragraph (d)(3) of this section is final and will not be subject to petitions for reconsideration.

[OR-94, 40 FR 7242, Feb. 19, 1975, as amended by OR-131, 43 FR 38574, Aug. 29, 1978]

§ 389.15 Certification of copies of documents.

The Secretary of the Board will provide, on request, certifications or validation (with the Civil Aeronautics Board seal) of documents filed with or issued by the Board. Copies of tariffs filed with the Board will be certified only when such copies have been made under the Board's supervision upon request of the applicant. Charges for this service are as follows:

(a) Certification of the Secretary, $2. This fee includes clerical services involved in checking the authenticity of records to be certified. If copying of the documents to be certified is required, the copying charges provided for in § 389.14 will be in addition to the charges specified in this section.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-35, 34 FR 5598, Mar. 25, 1969]

§ 389.16 Board publications.

(a) *Charges for publications.* Charges have been established by the Superintendent of Documents for subscriptions to certain Board publications. A list of these publications together with information on how they can be ordered is contained in the "List of Publications", which is available on request from the Board's Publications Services Division, B-22, Washington, D.C., 20428.

(b) *Free services.* No charge will be made by the Board for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Board. No charge will be made for single copies of Board publications individually requested in person or by mail, except where a charge is specifically fixed for a publication at the time of its issuance.

(c) *Reciprocal services.* Arrangements may be made with the Board's Bureau of International Aviation for furnishing publications to a foreign country or to an international organization on a reciprocal basis.

[OR-176, 46 FR 8445, Jan. 27, 1981]

§ 389.17 Transcripts of proceedings.

Transcripts of testimony and oral argument are furnished to the Board by a non-Government contractor for any proceeding in which the presiding officer has determined that such transcript should be made, and copies thereof may be purchased directly from the reporting firm, at prices and upon other terms and conditions specified in the contract made between the Board and the reporting firm, and currently in effect, pursuant to section 11 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. I). Any person may obtain from the Director, Office of Facilities and Operations, the name and address of the reporting firm with which the Board currently has such contract, as well as the contract prices then in effect for the various types of transcript and copying services covered by such contract.

[OR-84, 39 FR 22417, June 24, 1974]

Subpart C—Filing and Processing License Fees

§ 389.20 Applicability of subpart.

This subpart applies to the filing of certain documents at the Board by nongovernment parties, and prescribes fees for their processing.

[48 FR 642, Jan. 6, 1983]

§ 389.21 Payment of fees.

(a) Any document for which a filing fee is requried by § 389.25 shall be accompanied by either (1) a check, draft, or postal money order, payable to the Civil Aeronautics Board, in the amount prescribed herein, or (2) a request for waiver or modification of the filing fee.

(b) [Reserved]

(c) Where a document seeks authority or relief in the alternative and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a document relating to more than one transaction or matter seeks multiple authorities or relief, the requried filing fee shall be determiend by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the Board, except as provided in §§ 389.23 and 389.27.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-27A, 33 FR 3633, Mar. 1, 1968; OR-50, 35 FR 15986, Oct. 10, 1970; 48 FR 642, Jan. 6, 1983]

§ 389.22 Failure to make proper payment.

(a) Except as provided in § 389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Board.

(b) The filing fee tendered by a filing party shall be accepted by the Board office to whom payment is made, subject to post audit by the Chief of the Board's Finance Division and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Finance Division, may be appealed to the Managing Director of the Board, who has been delegated authority by the Board to decide such appeals in § 385.12 of this chapter. The filing party may submit to the Board a petition for review of the Managing Director's decision pursuant to § 385.50 of this chapter, and proceedings thereon will be governed by Part 385, Subpart C, of this chapter.

(c) The amount found due by the Chief, Finance Division, shall be paid within 10 days of notification except that (1) if that decision is appealed to the Managing Director, the amount due shall be paid within 10 days after the Managing Director notifies the filing party that he has affirmed or modified the decision of the Chief, Finance Division; and (2) if the decision of the Managing Director is appealed to the Board, the amount due shall be paid within 10 days after the Board notifies the filing party that it has affirmed or modified the staff decision. If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

[OR-27, 33 FR 70, Jan. 4, 1968, as amended by OR-96, 40 FR 20613, May 12, 1975]

§ 389.23 Application for waiver or modification of fees.

(a) Applications may be filed asking for waiver or modification of any fee paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Managing Director of the Board, and shall accompany the document filed. Applicants may appeal the decision of the Managing Director to the Board under § 385.50 of this chapter. When no petition for review is filed with the Board, or when the Board reviews the Managing Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024-0071)

[48 FR 642, Jan. 6, 1983, as amended by OR-215, 49 FR 6884, Feb. 24, 1984]

§ 389.24 Foreign air carriers.

A foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements of this part based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. To apply for a waiver under this section, foreign air carriers shall send waiver requests to the Director, Bureau of International Aviation. The request should include applicable official government rules, decisions, statements of policy, or comparable evidence concerning filing fees for U.S. air carriers, or for all carriers serving that country. Once a waiver has been granted for a specific country, no further waiver applications need be filed for that country.

(Approved by the Office of Management and Budget under control number 3024-0071)

[OR-209, 48 FR 10628, Mar. 14, 1983, as amended by OR-215, 49 FR 6884, Feb. 24, 1984]

§ 389.25 Schedule of processing fees.

Code	*Document*	
	INTERSTATE AND OVERSEAS AIR TRANSPORTATION	
	Certificate of Public Convenience and Necessity:	
	Application under sec. 401:	
1	Charter	850
2	Scheduled Service	850
3	Dormant Authority	290
4	All-Cargo under sec. 418	670
5	Transfer	290
6	Air Taxi Registration	8
7	Scheduled Passenger Commuter Registration	670
8	Change of Name (Use of Trade Name or reissuance of certificate)	165
9	Exemption Request (General):	
10	Section 403	53
11	Section 401 (domestic)	280
12	Section 419	120
13	Service Mail Rate Petition	420
	FOREIGN AIR TRANSPORTATION (U.S. AND FOREIGN AIR CARRIERS)	
	Certificate of Public Convenience and Necessity (sec. 401):	
14	Scheduled Service	900
15	Amendment to application	425
16	Charter Service	600
17	Amendment to application	200
18	Transfer	255
19	Change of Name (Use of Trade Name or reissuance of certificate)	125
	Foreign Air Carrier Permit (sec. 402):	
20	Initial	760
21	Amendment/Renewal of permit	475
22	Amendment to application for a permit	215
	Exemption:	
23	Section 403	53
	Section 401/402:	
24	10 or fewer flights	77
25	More than 10 flights	360
26	Filed less than 10 days before effective date requested	[1] 17
27	Other (U.S. and foreign air carriers)	360
28	Emergency cabotage (sec. 416(b)(7))	360
29	Relief for U.S. (sec. 101) and foreign (sec. 416) indirect air carriers	370
	Undocketed Items:	
30	Canadian Charter Air Taxi Registration	30
31	Foreign Freight Forwarder Registration	11
32	Foreign Tour Operator Registration	10
33	Foreign Aircraft Permit (Part 375)	25
34	Special Authorization (Part 375)	12
35	Charter Statement of Authorization	8
36	Intermodal Statement of Authorization	10
37	Special Authority (Part 216)	37
38	Items 33-37 if filed less than time required before effective date	[1] 11
39	IATA resolutions	61
	OTHER (U.S. AND FOREIGN AIR CARRIERS)	
	Charters:	
40	Public Charter Prospectus	39
41	OMPC Operation Authorization	665
42	Waiver of Charter Regulations	39

Code	Document	
	Tariffs:	
43	Pages	2
44	Special Tariff Permission	12
45	Waiver of Tariff Regulations	12
46	Approval of Interlocking Relationships	415
47	Merger or Acquisition of Control	1060
47a		
	Exemption request	371
	Agreements filed under section 412:	
48	Prior Approval (docketed)	1060
49	Routine (nondocketed)	64
50	Application for free and reduced-rate transportation	16

[1] Additional.

[48 FR 643, Jan. 6, 1983, as amended by OR-206, 48 FR 1941, Jan. 17, 1983; OR-210, 48 FR 15615, Apr. 12, 1983]

§ 389.26 Special rules for tariff page filings.

(a) *Tariffs issued by carriers.* The filing fee for tariff pages filed by U.S. air carriers will be charged even if the tariff includes matters involving participating foreign air carriers. It will also be charged if the tariff is issued by a foreign air carrier and includes matters involving participating U.S. air carriers, unless the foreign air carrier has obtained a waiver under § 389.24. The fee will not be charged for a blank looseleaf page unless it cancels matter in the preceding issue of the page.

(b) *Tariffs issued by publishing agents.* (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included on the same page with other matters that are reissued without change.

(3) The fee will not be charged for a blank looseleaf page unless it cancels matters in the preceding page.

(4) No fee will be charged when two pages are published back-to-back, one page is not subject to the fee under paragraph (b)(2), and the page on the reverse is issued without substantive change.

(5) The fee will be charged for two looseleaf pages containing a correction number check sheet unless all other pages of the tariff are exempt from the fee.

[48 FR 643, Jan. 6, 1983]

§ 389.27 Refund of fee.

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with § 389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Board's cost in providing the service. The application shall be filed with the Board's Comptroller and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024-0071)

[48 FR 643, Jan. 6, 1983, as amended by OR-215, 49 FR 6884, Feb. 24, 1984; 49 FR 32564, Aug. 15, 1984]

SUBCHAPTER F—POLICY STATEMENTS

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF ESSENTIAL AIR TRANSPORTATION

Sec.

398.1 Purpose.
398.2 Number and designation of hubs.
398.3 Specific airports.
398.4 Equipment.
398.5 Frequency of flights.
398.6 Maximum available capacity to be guaranteed by the Board.
398.7 Time of flights.
398.8 Number of stops permitted.
398.9 Load factor standard.
398.10 Overflights.

AUTHORITY: Secs. 204 and 419, Pub. L. 85-726, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389, unless otherwise noted.

SOURCE: PS-87, 44 FR 52659, Sept. 7, 1979, unless otherwise noted.

§ 398.1 Purpose.

The purpose of this part is to establish general guidelines for determination of essential air transportation for each eligible point under section 419 of the Act. Procedures for the determinations of the essential air service level for a point are in Part 325 of this chapter.

§ 398.2 Number and designation of hubs.

(a) *What is a hub?* The Board considers a hub to be any point enplaning more than 0.05 percent of the total enplanements in the United States

(b) *How many hubs?* (1) The Board will require service to one or two hubs. The Board will require service to two hubs if an eligible point has close commercial, geographical, and political ties to both hubs and if there if sufficient traffic from the eligible point to support two round trips per day to both hubs. If traffic is not sufficient, the Board may require one round trip per day to both hubs if the community requests such service.

(2) In no event will essential air service be service to more than two hubs.

(c) *Which hub?* (1) In designating hubs, the board will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;

(ii) The commercial, geographic, and political ties of candidate hubs to the eligible point;

(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and destination data;

(iv) Distance of hubs from the eligible point; and

(v) Size of candidate hubs. (Large size will be a positive factor, but mainly as substantiating the access and community ties factors.)

(2) For Alaska, rather than requiring service to a hub, the Board may only require that service from an eligible point be to a focal point for traffic in the area of the eligible point that has service to a larger hub.

§ 398.3 Specific airports.

(a) Essential air service may be specified as service to a particular airport at the eligible point. In the case of hyphenated points, essential air service will be specified as service to more than one airport only if clearly necessary and if the multiairport service is economically feasible and justified on the basis of traffic levels at these airports.

(b) Essential air service does not usually require service to a particular airport at a hub.

§ 398.4 Equipment.

It is not generally the policy of the Board to require any specific size or type of aircraft for providing essential air transportation except that:

(a) All aircraft must be sufficient to accommodate passengers and accompanying baggage at the point;

(b) Larger aircraft may be required over long distances;

(c) All aircraft must meet the applicable safety standards of the Federal Aviation Administration;

(d) All aircraft, other than those serving points in Alaska or points that have agreed to some other arrangement, must have two engines and be operated with two pilots;

(e) Pressurized and air conditioned aircraft will be required when absolutely necessary to provide usable air service at the eligible points; and

(f) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

§ 398.5 Frequency of flights.

(a) Except in Alaska, it is the policy of the Board to require at least two round-trip flights on each weekday and two round trips over the weekend from the eligible point to the designated hub, unless the point was receiving less than that in 1977 and cannot support such service at 50 percent average load factors.

(b) In Alaska, it is the policy of the Board to require either two round trips each week to each designated hub or focal point, or the level of service that existed for the point in 1976, whichever is greater, unless such service is clearly unnecessary and the Alaska Transportation Commission agrees that a different level of service would meet the needs of the community.

(c) An essential service level may be set at more than that stated in paragraphs (a) or (b) of this section if:

(1) Historic traffic data and studies of traffic generating potential of the point indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that point;

(2) More flights are needed because the capacity available to the eligible point is being shared with traffic destined for an intermediate stop or for a point beyond the eligible point;

(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the point; or

(4) For Alaska, the Alaska Transportation Commission agrees that more frequent service is needed to accommodate cargo traffic with the aircraft used at the eligible point.

(d) For eligible points where traffic levels vary with the season, a two-tier level of essential air service will be established with required flight frequencies changing accordingly.

(Secs. 204, 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1732 (49 U.S.C. 1324, 1389))

[PS-87, 44 FR 52659, Sept. 7, 1979, as amended at 44 FR 65585, Nov. 14, 1979]

§ 398.6 Maximum available capacity to be guaranteed by the Board.

(a) Only under unusual circumstances will an eligible point's essential air service level be fixed at a number of flights that will accommodate more than 80 passengers each day at the point (40 passengers from the eligible point and 40 passengers back to that point). Generally, 80 passengers can be accommodated by guaranteeing 160 available seats each day at the point (80 seats in each direction).

(b) The Board may guarantee an eligible point more than 160 seats each day if:

(1) The number of stops between or beyond the eligible point and the hub results in available aircraft capacity serving at the eligible point being shared with passengers at those intermediate stops or beyond points;

(2) The distance between the eligible point and the designated hub requires the use of large aircraft;

(3) The eligible point is extremely isolated;

(4) The eligible point has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity for that point; or

(5) Other unusual circumstances warrant guaranteeing the eligible point more then 160 seats each day.

(c) Eligible points receiving self-sufficient air service will, in the event of service reductions, generally not be guaranteed more than 75 percent of their present level of service to a maximum of 80 available seats each day in each direction (160 seats total).

[44 FR 65585, Nov. 14, 1979]

§ 398.7 Time of flights.

To qualify as essential air service, flights must depart at reasonable times. It is the policy of the Board to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights, local flight-times should be designed to link with those flights. If travel is primarily local, there should be at least one flight in the morning and one in the late afternoon or evening.

§ 398.8 Number of stops permitted.

(a) A maximum of two stops is permitted in providing essential air service between the eligible point and a hub, unless otherwise agreed with the community.

(b) In Alaska, more than two stops may be permitted if required by low traffic levels at the eligible point or by the long distance between the eligible point and the hub.

(c) The Board may require one-stop or non-stop service when that is necessary to make the service usable.

(d) Where an eligible point normally is an intermediate stop that shares available capacity with another point, it is the policy of the Board to either require additional capacity (more flights or larger aircraft) between the hub and the eligible point or to specify some turnaround operations in that route segment.

§ 398.9 Load factor standard.

The load factor guideline used in this part may be raised for individual eligible points under one or more of the following circumstances.

(a) The aircraft providing the essential air transportation there has more than eight seats;

(b) There is little likelihood that there will be periods of higher-than-normal demand for air transportation at that point;

(c) The number of seats on the aircraft operated at that point is not evenly divisible into the number of seats that the Board has guaranteed for that point;

(d) The point is served by the carrier as part of a linear route; or

(e) It would be in the interest of the community, the carrier, or the general public to increase the load factor standard for that point.

[46 FR 13687, Feb. 24, 1981]

§ 398.10 Overflights.

The Board considers it a violation of section 419 of the Act and the air service guarantees provided under this part for an air carrier providing essential air transportation to an eligible point to overfly that point, except under one of the following circumstances:

(a) The carrier is providing by its other flights the service required by the Board's essential air transportation determination for that point;

(b) The carrier is not compensated for serving that point and another carrier is providing by its flights the service required by the Board's essential air transportation determination for that point;

(c) Circumstances beyond its control prevent the air carrier from landing at the eligible point;

(d) The flight involved is not in a market where the Board has determined air transportation to be essential; or

(e) The eligible point involved is a point in Alaska for which the Board's essential air transportation determination permits the overflight.

[48 FR 36096, Aug. 9, 1983]

PART 399—STATEMENTS OF GENERAL POLICY

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Subpart G—Policies Relating to Enforcement

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399.86 Payments for non-air transportation services for air cargo.
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399.90 Non-transport activities of subsidized air carriers.
399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.
399.92 Interlocking relationships between an air carrier and a person controlling another air carrier.

Subpart I—Policies Relating to Disclosure of Information

399.100 Release of international passenger origin and destination statistics.
399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.
399.102 Routine public release of certain internal staff memoranda discussed at open Board meetings.

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

399.110 State economic regulation of federally authorized carriers prohibited.
399.111 All operations of federally authorized carriers to be regulated by the Board.

AUTHORITY: Secs. 102, 204, 404, 406, 411, 412, 419, 1102; Pub. L. 85-726 as amended; 72 Stat. 740, 743, 760, 769; 92 Stat. 1732; (49 U.S.C. 1302, 1324, 1374, 1376, 1381, 1382, 1389, 1502, unless otherwise noted.)

SOURCE: PS-21, 29 FR 1446, Jan. 29, 1964, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to this part appear at 37 FR 18909, Sept. 16, 1972.

Subpart A—Applicability and Effects of Policy Statements

§ 399.1 Applicability.

All statements of general policy adopted by the Board for the guidance of the public will be published in this part, except as provided in § 399.2.

§ 399.2 Exclusions.

The following types of policies are generally not included in this part:

(a) Policies relating solely to the internal management of the Board;

(b) Policies requiring secrecy in the public interest or in the interest of national defense;

(c) Policies that are repetitive of section 102 of the Act;

(d) Policies that are fully expressed in a procedural or substantive rule of the Board, or in any opinion, decision, order, certificate, permit, exemption, or waiver of the Board;

(e) Expressions of encouragement or admonition to industry to follow a certain course of action;

(f) Positions on legislative items and on other matters that are outside the scope of the Board's current statutory powers and duties.

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended by PS-63, 40 FR 6643, Feb. 13, 1975]

§ 399.3 Statements in other Board documents.

No statement contained in any Board opinion, decision, order, certificate, permit, exemption, or waiver shall be considered a statement of policy within the meaning of this part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Board or relief sought, or statements of the Board's reasons for failure to issue a rule upon which rule making proceedings have been commenced shall not be considered statements of policy, except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

§ 399.4 Nature and effect of policy statements.

Policy statements published in this part will be observed by the Board until rescinded, but any policy may be amended from time to time as experience or changing conditions may require. Changes in policy may be made with or without advance notice to the public and will become effective upon publication in the FEDERAL REGISTER unless otherwise provided. If it appears to the Board, in its consideration of any matter before it, that the application of a policy published in this part would run counter to an express provision of law or policy enunciated by Congress in the Act, the published policy shall not be applicable to such matter.

§ 399.5 Arrangement of policy statements.

The statements of general policy relating to the various duties and functions of the Board are grouped according to subject matter in the following subparts; the titles of the subparts indicate the general subject matter included therein.

Subpart B—Policies Relating to Operating Authority

§§ 399.10—399.11 [Reserved]

§ 399.12 Negotiation by air carriers for landing rights in foreign countries.

(a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for United States flag air carriers will be acquired through negotiation by the U.S. Government with foreign governments rather than by direct negotiation between an air carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the U.S. Government.

§§ 399.13—399.17 [Reserved]

§ 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.

It is the policy of the Board to limit the duration of exemptions which authorize fixed-term route service to a maximum period of two years, and to entertain requests for renewal of such authority only when incorporated in a duly filed application for substantially equivalent certificate authority under section 401 of the Act. (See § 302.909

of this chapter (Procedural Regulations) and § 377.10(c) of this chapter (Special Regulations).)

§ 399.19 [Reserved]

§ 399.20 Processing of applications of long-haul motor carriers or railroad carriers for authority as air freight forwarders or international air freight forwarders.

(a) *General.* This policy statement indicates the procedures the Board will use in processing applications of long-haul motor carriers of general commodities and railroad carriers for authorization as air freight forwarders or international air freight forwarders. It will also apply to such carriers' applications for Board approval of the acquisition of such forwarders.

(b) *Definitions.* As used in this section:

(1) "Long-haul motor carrier" means a motor carrier holding operating rights issued by the Interstate Commerce Commission to haul general commodities between any pair of points which are over 500 miles apart, or an affiliate[3] of such a carrier.

(2) "Railroad carrier" means a common carrier by railroad subject to Part I of the Interstate Commerce Act, or an affiliate[4] of such a carrier.

(c) *Applications for forwarding authority.* Where a long-haul motor carrier or railroad carrier applies for authority as an air freight forwarder or an international air freight forwarder its application will be processed in conformity with Part 296 of this chapter in the same manner as the application of any other person.

(d) *Applications for acquisition of control.* Where a long-haul motor carrier or railroad carrier applies for Board approval to acquire control of an air freight forwarder or an international air freight forwarder, the Board's policy in ordinary circumstances will be as follows:

(1) The Board will exempt the acquisition from the requirements of section 408(a) of the Act pursuant to the proviso in section 408(a)(5) to the extent and for such periods as it finds may be in the public interest; or, in the alternative the Board will process the application for approval without a hearing, pursuant to the third proviso in section 408(b) if it determines:

(i) That the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly and does not tend to restrain competition, and

(ii) That no person disclosing a substantial interest then currently is requesting a hearing.

(2) The Board will not deem the size, geographical extent, or general commodity rights of the long-haul motor carrier's surface transport authorization and operations, or the size or geographical extent of the railroad carrier's surface transport authorization and operations, of themselves, as factors indicating that the carrier's control of the air freight forwarder or international air freight forwarder will result in creating a monopoly or monopolies, and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control, or will otherwise be inconsistent with the public interest, and will normally approve such acquisition.

(3) Changes in the extent of the surface authorization or operations of a long-haul motor or railroad carrier arising from certificate changes, leases, acquisitions or other transactions need not be resubmitted to the board for approval if the underlying relationship has previously been approved by the Board.

(4) Determinations of applications for acquisitions of control referred to in this section are delegated to the Director, Bureau of Pricing and Domestic Aviation, pursuant to § 385.13 of the Board's Organization Regulations.

(Secs. 101(3), 102, 204(a), 408, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 740, 743, 767 (as amended) 771 (49 U.S.C. 1301, 1302, 1378, 1386))

[PS-40, 34 FR 19345, Dec. 6, 1969, as amended by PS-48, 36 FR 20156, Oct. 16, 1971; PS-74, 42 FR 33276, June 30, 1977; PS-74, 42 FR 43620, Aug. 30, 1977]

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[3] For the definition of "affiliate" see § 296.1(e), § 297.1(f), or § 244.1.

[4] Ibid.

§ 399.21 Charter exemptions (except military).

In deciding applications for exemptions from section 401 of the Act by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

(Secs. 102, 204(a), and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 740, 743, and 771, 49 U.S.C. 1302, 1324, and 1386)

[PS-78, 43 FR 31886, July 24, 1978]

Subpart C—Policies Relating to Rates and Tariffs

§ 399.30 Definitions.

As used in this subpart:

"DPFI formula fare" means the trunk coach formula fare on July 1, 1977, as established by the Board in Phase 9 of the Domestic Passenger Fares Investigation (Docket 21866-9).

"SIFL" means the standard industry fare level, as set forth in § 399.31.

[PS-92, 45 FR 24118, Apr. 9, 1980]

§ 399.31 Standard industry fare level.

(a) *Generally.* Except as set forth in paragraph (d) of this section, the standard industry fare level ("SIFL") for coach/standard service in a market is equal to the predominant fare in effect in that market on July 1, 1977, as adjusted by the Board for cost increases.

(b) *Predominant fare.* For each market, the predominant fare in effect on July 1, 1977, is presumed to be as set forth below. The presumption may be rebutted, however, by showing that more passengers used a higher fare.

(1) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified day-of-week fare differentials: the peak-season midweek fare appearing in tariffs in effect on July 1, 1977.

(2) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified only seasonal fare differentials: the off-peak-season fare appearing in tariffs in effect on July 1, 1977.

(3) For U.S. Mainland-Hawaii markets: the peak-season second class fare appearing in tariffs in effect on July 1, 1977.

(4) For all other interstate and overseas markets: the lowest unrestricted fare in effect on July 1, 1977.

(c) *Adjustments for cost increases.* The Board adjusts the SIFL at least once every 6 months by the percentage change, since the previous adjustment, in the actual operating cost per available seat-mile for interstate and overseas transportation combined. The method of adjustment is illustrated in the example set out at the end of this subpart.

(d) *Intrastate markets in California, Florida, and Texas.* For each of these markets, the SIFL is equal to the level that it would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

(e) *Intra-Hawaii markets.* For intra-Hawaii markets, the Board's flexibility zones are based not on the SIFL, but on the standard Hawaiian fare level ("SHFL"), which is equal to 110 percent of the first class fare in effect on July 1, 1977, as adjusted by the Board for cost increases.

[PS-92, 45 FR 24118, Apr. 9, 1980, as amended by PS-95, 45 FR 42255, June 24, 1980; PS-96, 45 FR 48604, July 21, 1980]

§ 399.32 Zone of limited suspension for domestic passenger fares.

(a) *Applicability.* This section sets forth the Board's policy on passenger fares for scheduled service by certificated air carriers in the following areas, except to the extent that greater flexibility is set forth in § 399.33:

(1) Within the 48 contiguous States and the District of Columbia ("the Mainland"); and

(2) Between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska.

(b) *Downward flexibility.* Each carrier may set fares in each market at any amount below the SIFL. The Board will not suspend such a fare on the ground that its level is unreasonable, except in the following extraordinary circumstances:

(1) There is a high probability that the fare would be found to be unlawful after investigation;

(2) There is a substantial likelihood that the fare is predatory so that there would be an immediate and irreparable harm to competition if the fare were allowed to go into effect;

(3) The harm to competition is greater than the injury to the traveling public if the proposed fare were unavailable; and

(4) The suspension is in the public interest.

(c) [Reserved]

(d) *Upward flexibility.* Each carrier may set fares above the SIFL as follows, and where they are so set, the Board will not suspend them on the grounds that their level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces:

(1) For service on the Mainland: Up to 30 percent above the sum of the SIFL plus $14. Each time after January 13, 1981, that the Board adjusts the SIFL for cost increases in accordance with § 399.31(c), it will adjust the $14 figure by the same percentage rounded to the nearest whole dollar. The Board order announcing the adjustment will be published in the FEDERAL REGISTER and served on all certificated carriers, and copies will be available through the Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

(2) For service between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska: Up to 30 percent above the SIFL.

(e) *Fares above the zone.* Tariff filings that state fares above the applicable zone must include the data and information set forth in § 221.165 of this chapter. For peak fares, this must include a description of the carrier's off-peak fares that are available in the market. The Board will suspend a fare above the zone that it finds not to be justified by cost or competitive factors.

[PS-94, 45 FR 40973, June 17, 1980, as amended by PS-96, 45 FR 48604, July 21, 1980; PS-101, 46 FR 11809, Feb. 11, 1981]

§ 399.33 Additional fare flexibility.

For scheduled service in the areas set forth in § 399.32(a), certificated air carriers have the following fare flexibility in addition to that set forth in § 399.32:

(a) *First class.* Carriers may without restriction set the level of first class fares.

(b) *Small aircraft.* Carriers may without restriction set the level of fares for service with aircraft designed to have a maximum passenger capacity of 60 or fewer seats.

(c) *Through service and on-line connecting service.* For through service and on-line connecting service, carriers may set their fares up to the sum of the local fares minus one tax-rounded coach ceiling terminal charge for each local fare after the first, if that level is higher than the ceiling set forth in § 399.32(d). The Board will not suspend such a fare on the ground that its level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces.

[PS-92, 45 FR 24119, Apr. 9, 1980, as amended by PS-94, 45 FR 40974, June 17, 1980; PS-96, 45 FR 48604, July 21, 1980]

§ 399.34 Intra-Hawaii and Intra-Puerto Rico/Virgin Islands fare flexibility.

For scheduled service within Hawaii, and within and between Puerto Rico and the Virgin Islands, certificated air carriers have the fare flexibility set forth in §§ 399.32 and 399.33, except that:

(a) Instead of the limits set forth in § 399.32(d), the upper limit of the zone for Puerto Rico/Virgin Islands is 30 percent above the SIFL, and for

Hawaii is 30 percent above the SHFL; and

(b) The fare flexibility set forth in § 399.33(a) (first class) does not apply to service within Hawaii.

APPENDIX A—UNITED STATES-PUERTO RICO ENTITY

[Normal fares in selected markets—comparison with SIFL]

Market	Ratemaking mileage	DPFI formula fare July 1977	July 1977 normal fare level				DPFI formula May 1980	May 1980 normal fare level			
			Peak		Offpeak			Peak		Offpeak	
			Midweek	Weekend	Midweek	Weekend		Midweek	Weekend	Midweek	Weekend
San Juan:											
Atlanta	1,547	$130.81					$203.53				
Eastern			$113	$113	$107	$107		$176	$176	$166	$166
Boston	1,674	139.04					216.33				
American								209	218	199	209
Eastern			122	128	116	122		209	218	198	209
Chicago	2,072	164.83					256.45				
American			149	149	143	143		232	232	222	222
Eastern			149	149	143	143		232	232	222	222
Miami	1,045	97.09					151.06				
American								121	131	113	121
Delta								121	131	113	121
Eastern			78	84	72	78		121	131	112	121
Pan Am (National)			78	84	72	78		122	122	122	122
New York	1,597	134.05					208.57				
American			108	114	102	108		175	196	175	196
Eastern			108	114	102	108		175	196	175	196
Pan Am								147	147	147	147
Philadelphia	1,576	132.69					206.45				
American			115	121	109	115		197	208	187	197
Eastern			115	121	109	115		175	196	175	196
Washington	1,565	131.97					205.34				
American			114	120	108	114		187	197	176	187
Eastern			114	120	108	114		195	206	184	195
Pan Am (National)								147	147	147	147

APPENDIX B—SELECTED FARE AND SERVICE DATA FOR SEATTLE-ALASKA MARKETS

Market	Ratemaking mileage	Actual July 1977 Y fare	DPFI formula fare May 1980 [1]	SIFL formula fare May 1980 [1,2]	Y fare as of June 1980 [2]		O. & D. passengers Y/E Aug. 30, 1979 [3]	Carriers providing single plane service June 1980 [4]
					Alaska Airlines	Wien Alaska		
Seattle:								
Anchorage	1,446	$119.00	$193.52	$185.14	$159	$159	196,630	AS/NW/WA/WC
Cordova	1,293	118.62	176.85	184.55	178		4,330	AS

APPENDIX B—SELECTED FARE AND SERVICE DATA FOR SEATTLE-ALASKA MARKETS—Continued

Market	Ratemaking mileage	Actual July 1977 Y fare	DPFI formula fare May 1980[1]	SIFL formula fare May 1980[10]	Y fare as of June 1980[2]		O. & D. passengers Y/E Aug. 30, 1979[3]	Carriers providing single plane service June 1980[4]
					Alaska Airlines	Wien Alaska		
Fairbanks	1,533	131.00	201.85	203.81	204	204	44,910	AS/NW/WC
Gustavus (Via JNU)	950	109.62	140.74	170.55	138		1,340	AS
Juneau	909	90.62	137.04	140.99	141	141	40,110	AS/WC
Ketchikan	680	71.62	112.96	111.43	112	112	34,970	AS/WC
Petersburg (Via KTN)	790	89.22	124.07	136.81	136		6,870	AS
Sitka	862	85.62	131.46	133	133.21		17,240	AS
Wrangell (Via KTN)	762	89.22	121.30	136.81	138		4,120	AS
Yakutat	1,092	117.62	155.56	182.99	175		1,500	AS
Kenai[5]	1,466	124.26	198.37	193.35		159	2,470	WC
King Salmon[6]	1,603	167.94	209.26	261.26		200	4,090	WC
Prudhoe Bay[7]	1,802	190.74	229.63	296.75		273	960	WC
Kodiak[8]	1,439	119.00	192.59	185.14		155	11,140	WC
Homer[9]	1,449	143.40	193.52	223.10		159	1,250	WC

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[1] $25.14 plus 13.75¢ per mile (0–500); 10.49¢ per mile (501–1500); 10.06¢ per mile (1501 and over). See Order 80–4–211.

[2] Domestic Tariffs.

[3] O. & D. Origin Destination Survey of Airline Passenger Traffic, Table 8, 12 months ended September 30, 1979.

[4] AS=Alaska Airlines; NW=Northwest Orient Airlines; WA=Western Airlines; WC=Wien Air Alaska.

[5] Via Anchorage ($15.28).

[6] Via Anchorage ($48.94).

[7] Via Fairbanks ($59.74).

[8] Local WA Fare.

[9] Via Kodiak ($24.40).

[10] July 1977 fare increased by cumulative adjustment factor of 1.5558% per Order 80–4–211.

APPENDIX C—ADJUSTMENT OF THE INTRA-HAWAIIAN FARE LEVEL JULY 1, 1977, TO REFLECT COST AT 12.35 PERCENT RETURN

	Regulatory actual Y.E. March 1977			Cost inflation adjusted to July 1, 1977			July 1, 1977, at 12.35 pct R.O.I.
	Aloha	Hawaiian	Total	Aloha	Hawaiian	Total	
RPM's (000)	321,578	404,793	726,371	321,578	404,793	726,371	726,371
ASM's (000)	489,128	638,050	1,127,178	489,128	638,050	1,127,178	1,127,178
Load Factor (percent)	65.75	63.44	64.44	65.75	63.44	64.44	64.44
Yield (dollars)[2]	$0.1427	$0.1453	$0.1441	$0.1427	$0.1453	$0.1441	$0.1589
Operating Revenue—Total	$47,648	$71,599	$119,247				
Passenger Related Revenue	$46,301	$59,942	$106,243	$46,301	$59,942	$106,243	$116,966
Operating Expense—Total	$45,195	$68,836	$114,031				
Passenger Related Expenses	$43,858	$57,501	$101,359	[1] $45,937	$59,013	[1] $104,950	$104,950
Operating Profit—Passenger	$2,443	$2,441	$4,884	$364	$929	$1,293	$12,016
Interest Expense	$741	$2,583	$3,324	$741	$2,583	$3,324	$3,324
Earnings Before Tax	$1,702	$(142)	$1,560	$(377)	$(1,654)	$(2,031)	$8,692
Tax at 48 Percent	$817	$68	$749	$181	$794	$975	$4,172
Net Income	$885	$(74)	$811	$(196)	$(860)	$(1,056)	$4,520
Return Element	$1,626	$2,509	$4,135	$546	$1,723	$2,268	$7,844
Investment	$16,192	$47,326	$63,518	$16,192	$47,326	$63,518	$63,518
Return on Investment (percent)	10.04	5.30	6.51	3.37	3.64	3.57	12.35
Increase Factor[3]							10.27

[1] Cost inflation to July 1, 1977; 1.047 percent for Aloha, 1.026 for Hawaiian. The differing rates for the two carriers, having equivalent aircraft and duplicate route structures, is due primarily to a shift by Hawaiian to larger DC-9-50 aircraft starting in the fourth quarter of 1976.

[2] Passenger revenue divided by RPM's.

[3] Passenger yield at 12.35 percent return divided by actual passenger yield for the year ended March 1977.

[PS-96, 45 FR 48604, July 21, 1980]

§ 399.35 Special tariff permission.

(a) *Definition.* As used in this section, "to grant STP" means to approve a carrier's application for Special Tariff Permission to file a tariff on less than the statutory notice set forth in § 221.160(a) of this chapter.

(b) *Lower fares, rates, and charges.* It is the policy of the Board to grant STP for tariffs that state lower fares, rates, or charges and any rules affecting only those lower fares, rates, or charges, except that:

(1) The Board will not grant STP to match a tariff filed on statutory notice; and

(2) The Board will not grant STP if the proposed fares, rates, charges, or rules raise significant questions of lawfulness, that is, could reasonably be expected to be found unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or predatory, under current statutory or Board guidelines. In these situations, if the carrier files the tariff on statutory notice and at the same time applies for STP to advance the tariff's effective date, the Board will use its best efforts to act within 15 days to grant or deny STP.

(c) *Higher fares or rates.* For tariffs that state higher fares or rates, and any rules affecting only those fares or rates, the Board's policy on STP is, except in unusual or emergency circumstances:

(1) To grant STP if the resulting fares or rates are within a statutory or Board-established zone of fare or rate flexibility; and

(2) Otherwise, to deny STP.

[PS-94, 45 FR 40974, June 17, 1980, as amended by PS-109, 48 FR 4279, Jan. 31, 1983]

§ 399.36 Unreasonable discrimination.

(a) As used in this section:

(1) "Unreasonable discrimination" means unjust discrimination or unreasonable preference or prejudice; and

(2) "Rate" means rate, fare, or charge.

(b) Except in unusual circumstances or as provided in paragraph (c) of this section, the Board will find a rate for domestic air transportation to constitute unreasonable discrimination only if:

(1) There is a reasonable probability that the rate will result in significant long-run economic injury to passengers or shippers;

(2) The rate is in fact discriminatory according to a reasonable cost allocation or other rational basis;

(3) The rate does not provide transportation or other statutorily recognized benefits that justify the discrimination; and

(4) Actual and potential competitive forces cannot reliably be expected to eliminate the undesirable effects of the discrimination within a reasonable period.

(c) A rate that discriminates on the basis of the status of the traffic carried will not be presumed to be unreasonably discriminatory, unless the use of the status categories in question is contrary to established national antidiscrimination policy.

[PS-93, 45 FR 36062, May 29, 1980]

§ 399.37 Joint fares.

There should be joint fares in all markets over all routings within the contiguous 48 states and the District of Columbia as follows:

(a) *Level.* The level shall not exceed the sum of the maximum local fares permitted by this subpart minus one tax-rounded coach ceiling terminal charge for each interline connection, and in any event shall not exceed the sum of the actual local fares.

(b) *Division.* Joint fares shall be divided according to the relative costs of the mileage flown by each carrier participating in the interline movement. However, where a joint fare is equal to the sum of the actual local fares, each carrier shall get the local fare as its share.

[PS-92, 45 FR 24119, Apr. 9, 1980, as amended by PS-95, 45 FR 42255, June 24, 1980]

§ 399.38 Temporary subsidy rates.

It is the policy of the Board to fix temporary subsidy rates, when such emergency action is required, at a level designed to provide only such amounts as are deemed necessary for continuation of operations prior to the establishment of a final rate. In most cases, this objective may be attained by providing an amount of subsidy equivalent to the subsidy break-even need (i.e., the excess of operating expenses over non-subsidy revenues) plus the carrier's interest charges on long-term debt. Temporary subsidy rates will be established at an amount less than the sum of subsidy break-even need and interest charges in any case where overpayment might otherwise appear likely to result.

[PS-21, 29 FR 1446, Jan. 29, 1964. Redesignated by PS-92, 45 FR 24118, Apr. 9, 1980]

§ 399.39 Equipment purchase deposits.

Equipment purchase deposits are advance payments made by air carriers to manufacturers for the purchase of equipment to be delivered in the future, or funds segregated by air carriers for this purpose. It is the policy of the Board not to recognize equipment purchase deposits in an air carrier's investment base for ratemaking purposes. When equipment is acquired by an air carrier and placed in air-transport service, the Board will recognize in the air carrier's investment base interest on purchase deposits on such equipment capitalized and amortized in accordance with the Uniform System of Accounts and Reports for Certificated Air Carriers (Part 241 of this chapter).

(Sec. 407, 72 Stat. 766, 80 Stat. 383; 49 U.S.C. 1377, 5 U.S.C. 552)

[PS-32, 32 FR 5370, Mar. 30, 1967]

§ 399.40 Tariffs for domestic air transportation on or after January 1, 1983.

The Board will not approve or accept any tariff filings for interstate of overseas air transportation to be performed on or after January 1, 1983. Any tariffs for such transportation that do not specify an earlier expiration date shall expire at midnight on December 31, 1982.

[PS-107, 47 FR 14893, Apr. 7, 1982]

§ 399.41 Zones of limited suspension for international cargo rates.

(a) *Applicability.* This section states the Board's policy for suspending rate changes for the transportation of property in foreign air transportation. It does not affect the Board's authority to suspend any rate as unjustly discriminatory, unduly preferential, or unduly prejudicial. This section applies to rate changes by all direct air carriers and direct foreign air carriers.

(b) *Standard foreign rate levels.* For each market in foreign air transportation, the standard foreign rate level for the carriage of property shall be the bulk general commodity rates in effect in that market on April 1, 1982, as adjusted in accordance with paragraph (f) of this section. However, the general commodity rate for shipments larger than 500 kg. shall be deemed to be the same as the 500 kg. rate for the purposes of this paragraph, regardless of any different rate in effect in the market.

(c) *Ceilings of limited rate suspension.* Except as provided in paragraph (d) of this section, the Board will not suspend as unreasonable any proposed rate for foreign air transportation of property equal to or less than the following levels:

(1) For all bulk rates (GCR's and SCR's) in the Atlantic region, 20 percent above the standard foreign rate level.

(2) For all bulk rates (GCR's and SCR's) in the Pacific region, 15 percent above the standard foreign rate level.

(3) For all bulk rates (GCR's and SCR's) in the Western Hemisphere region (except Mexico and Canada), 5 percent above the standard foreign rate level.

(4) For all bulk rates (GCR's and SCR's) in Canada/Mexico transborder markets, 10 percent above the standard foreign rate level for the Western Hemisphere.

(5) For all container rates, no maximum level.

(d) *Extraordinary circumstances.* The Board may suspend any tariff if it finds that:

(1) The suspension is in the public interest because of unreasonable regulatory action by a foreign government with respect to rate proposals of an air carrier, or

(2) All of the following extraordinary circumstances are present:

(i) It is highly probable that the fare would be found unreasonable after investigation;

(ii) There is a substantial likelihood of immediate and irreparable harm to the public if the rate is allowed to go into effect; and

(iii) The suspension is required by the public interest.

(e) *Burden of proof.* Persons requesting tariff suspension under paragraph (d) of this section shall have the burden of producing convincing evidence that the conditions of that paragraph are present.

(f) *Standard foreign rate level adjustments.* (1) The Board will periodically adjust the standard foreign rate levels to reflect the percentage change in average operating costs per available ton-mile since the previous adjustment.

(2) Costs will be averaged for three regions—the Atlantic, the Pacific, and Western Hemisphere—and applied equally among all markets in each region.

(3) Cost computations will be based on scheduled freighter and combination service by U.S. air carriers.

(4) Adjustments will be made on April 1 and October 1 of each year, or more frequently as the Board finds appropriate.

(5) In computing costs under this section, the Board will make no adjustments for load factors, aircraft utilization, or other matters due to operational decisions made solely by carrier management. However, the Board retains the discretion to normalize costs for strikes, mandatory aircraft groundings, and other occurrences not solely due to management decisions.

(g) *Definitions.* For the purpose of this section:

(1) "GCR" means general commodity rate.

(2) "SCR" means specific commodity rate.

(3) "Container rate" means any rate specifically applicable to property ten-

dered to the carrier in a unit load devise.

[PS-109, 48 FR 4279, Jan. 31, 1983]

§ 399.42 Flight equipment depreciation and residual values.

For rate-making purposes, for air carriers receiving subsidy under section 406 of the Act, it is the policy of the Board that flight equipment depreciation will be based on the conventional straight-line method of accrual, employing the service lives and residual values set forth below:

[In percent]

	Service life in years	Residual value as percent of cost
Turbofan equipment:		
4-engine	14	2
3-engine	14	2
2-engine	14	2
Turbojet equipment:		
4-engine	10	5
2-engine	10	5
Turboprop equipment:		
4-engine	12	5
2-engine	10	15
Wide-body equipment:		
4-engine	16	10
3-engine	16	10

(Secs. 204, 404, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, and 788; 49 U.S.C. 1324, 1374, and 1482, 5 U.S.C. 553)

[PS-54, 38 FR 24643, Sept. 10, 1973, as amended by PS-99, 45 FR 82625, Dec. 16, 1980]

§ 399.43 Treatment of leased aircraft.

In determining the appropriate treatment of leased aircraft for rate-making purposes, it is the Board's policy to recognize actual rental expenses. In unusual circumstances where the leased aircraft value (determined on a constructive depreciated basis) in relation to net book value of owned aircraft operated by the same air carrier is significantly in excess of the ratio for the aggregate of the domestic trunklines and local service carriers (computed on the same basis), a reasonable profit element may be added which shall reflect the additional risks of operations with the leased aircraft, to the extent that such risks are not compensated by the return on investment. Such profit element would be determined by applying the standard rate of return, less 6 percentage points, to the value of the leased aircraft, on a constructive depreciated basis, to the extent the ratio of such value to depreciated cost of owned aircraft plus the value of leased aircraft exceeds the average for the domestic air carriers. Rental cost plus allowable profit, if any, will not be recognized in amounts exceeding depreciation plus return on investment computed as if the aircraft had been purchased by the carrier.

(Secs. 204, 404, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, and 788; 49 U.S.C. 1324, 1374, and 1482, 5 U.S.C. 553)

[PS-44, 36 FR 7229, Apr. 16, 1971]

§ 399.44 Treatment of deferred Federal income taxes for rate purposes.

For rate-making purposes other than the determination of subsidy under section 406(b), it is the policy of the Board that Federal income tax expense should be based on the normal taxes that would be paid under the depreciation standards used for rate making, and that accumulated reserves for deferred taxes should be excluded from the recognized capitalization for rate-base purposes.

(Secs. 204, 404, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, and 788; 49 U.S.C. 1324, 1374, and 1482, 5 U.S.C. 553)

[PS-46, 36 FR 7232, Apr. 16, 1971]

EXAMPLE OF SIFL ADJUSTMENT

[Methodology for determining change in operating expense per available seat-mile]

[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total passenger/cargo[16]
Total operating expense[1] (millions)	$16,455	$2,522	$18,977	$19,384
Less:				
All-cargo expenses[2]	269		269	269
Belly offset[3]	952	153	1,105	1,153
Nonscheduled[4]	141	46	187	205
Transport related[5]	379	31	410	416
Plus: Capitalized lease adjustment[10]	119	2	121	121
Passenger operating expense	14,833	2,294	17,127	17,462
Passenger fuel cost[11]			4,103	N.A.
Scheduled service ASM's (mils.)	281,671	33,051	314,722	316,459
Passenger nonfuel operating expense per ASM (dollars)			.04138	N.A.
Passenger fuel expense per ASM (dollars)			.01304	N.A.
Total passenger expense per ASM (dollars)			.05442	.05483
Year ended September 1978				
Total operating expense[1] (millions)	14,081	2,033	16,114	16,448
Less:				
All-cargo expenses[2]	282		282	282
Belly offset[3]	869	152	1,021	1,065
Nonscheduled[4]	193	53	246	256
Transport related[5]	419	30	449	454
Plus: Capitalized lease adjustment[10]	78	1	79	79
Passenger operating expense	12,396	1,799	14,195	14,470
Passenger fuel cost[11]			3,129	N.A.
Scheduled service ASM's (mils.)	262,068	27,067	289,135	292,255
Passenger nonfuel operating expense per ASM (dollars)			.03827	N.A.
Passenger fuel expense per ASM (dollars)			.01082	N.A.
Total passenger expense per ASM (dollars)			.04909	.04951
Percent change in nonfuel operating expense per ASM (percent)			8.13	N.A.
Projected change in nonfuel expense from April 1, 1979 to April 1, 1980[6]			8.13	N.A.
Estimated change in fuel cost, year ended September 1979 average to April 1, 1980[14]			73.08	N.A.
Nonfuel operating expense per ASM at April 1, 1980[7] (dollars)			.04474	N.A.
Fuel expense per ASM at April 1, 1980[7] (dollars)			.02257	N.A.
Total expense per ASM at April 1, 1980[7] (dollars)			.06731	[15].06782
Year ended March 1977				
Total operating expense[1] (millions)	$11,726	$1,520	$13,316	$13,601
Less:				
All-cargo expense[2]	236		236	236
Belly offset[3]	729	96	825	865
Nonscheduled[4]	220	35	225	266
Transport related[5]	427	111	538	554
Passenger operating expense	10,112	1,348	11,460	11,678
Passenger fuel cost	2,190	230	2,420	N.A.
Scheduled service ASM's (mils.)	239,593	23,428	263,021	265,837
Operating expense per ASM (dollars)	.04221	.05754	.04357	.04393
Projected expense per ASM (dollars) as at July 1, 1977[12]				.04593
Projected operating expense per ASM as at April 1, 1980 (page 1) (dollars)				.06782
Ceiling adjustment factor[8] (percent)				47.66

D.P.F.I. formula effective July 15, 1977[13]:

Terminal charge $16.16

Plus .0884/mile (0–500 miles).

Plus	.0874/mile (501–1,500 miles).
Plus	.0848/mile (over 1,500 miles).
Ceiling formula through April 30, 1980 [9]:	
Terminal charge	$23.86
Plus	.1305/mile (0–500 miles).
Plus	.0995/mile (501–1,500 miles).
Plus	.0957/mile (over 1,500 miles).

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[1] Total operating expense for all operations and service (in millions).

[2] Scheduled all-cargo operations expense.

[3] Total scheduled-service cargo revenue, less scheduled all-cargo operations revenue, carried as a by-product in aircraft belly compartments. Includes freight, express, priority and non-priority U.S. mail, and excess baggage.

[4] Total non-scheduled revenues times 0.95, assuming charter operations would only be conducted at a profit.

[5] Total transport-related expense, less any excess of expense over total transport-related revenues.

[6] We here project costs from April 1, 1979 (the midpoint of the data year ended September 1979) to April 1, 1980 the resultant increase factor effective through April 30, 1980.

[7] Operating expense per ASM for year-ended September, 1979, times projected change.

[8] Projected operating expense per ASM on April 1, 1980 divided by the operating expense as at July 1, 1977.

[9] Adjustment results in a 2.5 percent increase in level over current January 1, 1980 factor.

[10] Additional rental expense that would have been incurred had leases not been capitalized under FASB-13, less actual amortization of capitalized lease expense.

[11] Total fuel cost, scheduled service, times complement of rate of All-Cargo expense to total Operating Expense.

[12] Order 77-7-26.

[13] Year ended March, 1977 cost per ASM, times cost escalation factor of 1.04543 (to July 5, 1977). See DPFI workpapers, Y.E. March, 1977.

[14] Estimated average cost per gallon for the trunk plus local service carriers at April 1, 1980, divided by the average for the year ended Sempember, 1979 (48.33¢).

[15] Change in Trunks plus Locals cost per ASM as at April 1, 1980, to year ended September, 1979 times total Psgr/Cargo cost for the year ended September, 1979.

[16] Includes Alaskan, Hawaiian and other regional carriers.

[PS-92, 45 FR 24119, Apr. 9, 1980]

Subpart D—Policies Relating to Accounts and Reports

§ 399.50 Extensions of time for filing reports.

With respect to the prescribed reporting requirements, the Board will grant extensions of time for filing reports only in emergency situations that could not be anticipated and guarded against by the air carrier concerned. Written requests setting forth good reason for such an extension must be submitted sufficiently in advance of the due date to permit consideration and communication to the carrier of the action taken. When requests for extensions are denied by the Board and reports are not filed on the due date, the delinquent carriers will be subject to a civil penalty for each day the violation continues, as provided in section 901(a) of the Act.

§ 399.51 Confidential treatment of unaudited preliminary year-end reports.

In consideration of air carrier interest in confidential treatment of unaudited preliminary year-end reports, which are by their nature subject to change, and in the absence of specific public interest factors that require disclosure of such reports, it is the policy of the Board to grant requests of air carriers for temporary withholding of such unaudited reports from public disclosure until the final report is filed, or the final report is due, or the carrier releases the information contained in the preliminary report, whichever shall first occur.

§ 399.52 Retroactive adjustments of expenses.

Except as required by the Board to conform the accounting to the provisions of the Economic Regulations or as permitted by the Board to conform the books with adjustments required by the Board for rate-making purposes, it is the policy of the Board for accounting and reporting purposes to adhere strictly to the principle that costs once charged to expense shall not be reversed in a subsequent fiscal year and charged again as expense of future periods.

Subpart E—Policies Relating to Hearing Matters

§ 399.60 Standards for determining priorities of hearing.

(a) *General.* This policy statement describes the general standards which will be used by the Board in determining the order in which it will designate for hearing those matters on its docket which are to be decided after notice and hearing. Among such matters are applications for certificates of public convenience and necessity or for foreign air carrier permits; applications under section 408 of the Act for approval of consolidations or acquisitions of control; complaint cases; and various rate-making proceedings.

(b) *Standards.* Matters will be assigned for hearing in accordance with the degree of relative priority which each matter is entitled to on the basis of the comparative public interest involved therein. Among other things, the Board will take into account:

(1) Statutory requirements for preference or statutory limitations on the time within which the Board shall act;

(2) The impact of delay on the public or particular persons;

(3) The need for promptly securing compliance with the provisions of the Act;

(4) The time for which the matter has already been pending and which would be required to dispose of it;

(5) Whether the application requests renewal of an existing temporary authorization; and

(6) In matters relating to operating authority:

(i) Whether a proposal might reduce subsidy or increase economy of operations;

(ii) Whether an application proposes new service;

(iii) The volume of traffic that might be affected by the grant or denial of the proposal;

(iv) The period that has elapsed since the Board considered the service needs of the places or areas involved; and

(v) The relative availability of necessary staff members of the carriers, communities and the Board, in the light of other proceedings already in progress, to handle the processing of the case.

Interested persons may urge upon the Board such considerations as they believe should lead it to accord a particular application a priority different from that which the Board has given it.

§ 399.61 Presentations of public and civic bodies in route proceedings.

For the purpose of implementing the Board's policy to provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and otherwise to expedite route proceedings, and in light of experience, the following guidelines are hereby established:

(a) Public and civic bodies which represent the same geographic area or community should consolidate their presentation of evidence, briefs or oral argument to the examiner and the Board;

(b) A public body or a civic organization, or several such bodies or organizations whose presentation of evidence is consolidated, should keep to a minimum the number of witnesses used to present the factual evidence in support of the community's position;

(c) Exhibits offered in evidence by a public body or civic organization should be limited to evidence of the economic characteristics of the community and area involved, data as to community of interest and traffic, evidence with respect to the sufficiency of existing service, and airport data, and should not include data relating to number of electricity, water and gas meters, telephones, schools, freight car loadings, building permits, sewer connections, or volume of bank deposits in the community.

§ 399.62 Target dates in hearing cases.

(a) *Applicability.* This section applies to initial and recommended decisions of administrative law judges, final decisions, and decisions on petitions for review or reconsideration in cases in which the Board has ordered a trial-type hearing before an administrative law judge.

(b) *Issuance of target dates.* In cases to which this section applies, the Board or the administrative law judge, as the situation calls for, shall issue a notice of the target date for the completion of the initial or recommended decision, final decision, or decision on a petition for review or reconsideration. The Board or the administrative law judge shall endeavor to render the pending decision not later than the target date.

(c) *Time for promulgating target dates.* (1) In the case of initial, recommended, or final decisions, notice of target dates shall be issued, served, and filed within 20 days of the submission of closing briefs, or the conclusion of oral argument to the administrative law judge or the Board, as may be appropriate.

(2) In the case of petitions for review or for reconsideration, notices of target dates shall be issued, served, and filed within 20 days of the date for the filing of answers: *Provided,* That, in the case of petitions for reconsideration of Board decisions awarding new route authority, the Board shall, in lieu of issuing individual target dates, endeavor to render its decision no later than the day preceding the effective date of the new authority awarded.

[PS-71, 41 FR 41407, Sept. 22, 1976, as amended by PS-73, 42 FR 21611, Apr. 28, 1977]

§ 399.63 Role of staff in route proceedings.

(a) *General.* This policy statement establishes the standards applicable to staff participation in oral hearing cases involving award of route authority.

(b) *Standards.* The staff's role during such hearings, primarily because it acts in the broad public interest, and not for a particular private or local interest, is to assure that essential evidence is introduced to resolve the public interest issues; that the evidence submitted by the parties is subject to adversary testing, and that decisional options are developed with the public interest in mind. In route cases designated by the Board that offer the opportunity for developing new policies to adapt to the administration of the Federal Aviation Act or that raise unusual evidentiary issues, a prehearing presentation by staff of decisional options will contribute to a better trial record, be consistent with traditional notions of fundamental fairness, better serve the Board's decisionmaking needs and ultimately serve the public interest. In any route case where the Board has not required the staff to participate by making a prehearing presentation, the staff shall present a prehearing presentation of decisional options if the administrative law judge finds that there exists unusual policy or evidentiary issues which clearly require such a presentation. We believe it is not desirable for the staff to advocate the adoption of a single decisional option at the outset of a case. Accordingly,

(1) In route cases designated by the Board that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(2) In any route case in which the administrative law judge finds that there exists unusual policy or evidentiary issues clearly requiring a prehearing presentation, the staff shall submit a prehearing statement of the decisional options available.

(3) To the extent possible, the Board, in its instituting orders, will identify or designate the cases which involve the development of new policies or unusual evidentiary issues that will require the type of staff participation described in § 399.63(b)(1).

[PS-76, 43 FR 19354, May 5, 1978]

Subpart F—Policies Relating to Rulemaking Proceedings

§ 399.70 Disposition of rulemaking petitions.

(a) *Applicability.* This section shall apply to petitions filed with the Board, seeking the institution of rulemaking with respect to matters governed by the procedures set forth in 5 U.S.C. 553, other than interpretative rules, rules of agency organization, accounting rules, and rules relating to reporting requirements.

(b) *Definition.* For the purposes of this section, the term "disposition" shall include, but not be limited to, the issuance of an advance notice or a notice of proposed rulemaking or the institution of an evidentiary proceeding with respect to the subject matter of a petition, the dismissal or denial of a petition, the consolidation of a petition with another proceeding pending before the Board, or the deferral of consideration of the merits of a petition pending specified future developments with respect to a related matter involved in another proceeding pending before the Board or any other administrative, judicial, legislative, or similar body.

(c) *Announcement of disposition.* It is the policy of the Board to endeavor to announce its disposition of all petitions to which this section applies within 120 days after the date established for the filing of answers thereto. In instances in which the Board finds that it will be unable, for good cause, to make an appropriate disposition of the petition within the 120-day period, it will, prior to the expiration of such period, announce a date certain by which it expects to make such disposition, incorporating in its announcement a brief statement of the reasons therefor.

(d) *Previously filed petitions.* For the purposes of this section, petitions filed before the effective date of this section shall be treated as having been filed on the effective date hereof.

[PS-68, 41 FR 10599, Mar. 12, 1976]

§ 399.71 Criteria for identifying significant rules.

The Board will consider a proposed rule to be significant within the meaning of E.O. 12044, *Improving Government Regulations,* if it satisfies any of the following criteria:

(a) It relates to a matter of significant concern to the President, Congress, State or local governments, small communities, or the public in general (expecially if it is likely to generate much public comment);

(b) It appears likely to have a substantial effect on price, costs, revenues, quality of service, or competition in the field of air transportation;

(c) It appears likely to have a substantial effect on a particular class of users or suppliers of air transportation;

(d) It appears likely to impose heavy compliance or reporting burdens;

(e) It involves important Board policy that will require substantial resources to develop or enforce;

(f) It appears likely to have a substantial effect on the conduct of Board proceedings;

(g) It discriminates on the basis of sex; or

(h) It appears likely to have a substantial effect on the programs or requirements of other agencies.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324, E.O. 12044, 43 FR 12661)

[PS-88, 44 FR 65055, Nov. 9, 1979]

§ 399.72 Criteria for determining whether a regulatory analysis will be performed.

A regulatory analysis will be performed for any proposed regulation that:

(a) Would have an annual effect on the economy of $100 million or more;

(b) Would result in a major increase in costs or prices or decrease in revenues for individual industries, levels of government, or geographic regions; or

(c) The Board, in its discretion, finds important or burdensome enough to warrant a regulatory analysis.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324, E.O. 12044, 43 FR 12661)

[PS-88, 44 FR 65055, Nov. 9, 1979]

§ 399.73 Definition of "small business" for Regulatory Flexibility Act.

For the purposes of the Board's implementation of Chapter 6 of Title 5, U.S. Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a "small business" if it provides air transportation only with "small aircraft" as defined in § 298.3 of this chapter (up to 60 seats/18,000 pound payload capacity).

[PS-108, 47 FR 49963, Nov. 4, 1982]

Subpart G—Policies Relating to Enforcement

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Board to regard any of the following enumerated practices (among others) by a ticket agent as an unfair or deceptive practice or unfair method of competition:

(a) Misrepresentations[1] which may induce members of the public to believe that the ticket agent is an air carrier.

(b) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the ticket agent, in advertisements, on or in places of business, or on aircraft in connection with the name of an air carrier with whom it does business, in such manner that it may mislead or confuse the traveling public with respect to the agency status of the ticket agent.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentation as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(e) Misrepresentations that passengers are directly insured when they are not so insured; for example, where the only insurance in force is that protecting the air carrier in event of liability.

(f) Misrepresentations as to fares and charges for air transportation or services in connection therewith.

(g) Misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specific in the lawful tariffs of the air carrier which is to perform the transportation.

(h) Advertising or otherwise offering for sale or selling air transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the air carrier or air carriers who are engaged to perform such air transportation or services, or offering or giving rebates or other concessions thereon, or assisting, suffering or permitting persons to obtain such air transportation or services at less than such lawful rates, fares and charges.

(i) Misrepresentations that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

(j) Selling air transportation to persons on a reservation or charter basis for specified space, flight, or time, or representing that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with an air carrier for the furnishing of such definite reservation or charter as represented or sold.

(k) Selling or issuing tickets or other documents to passengers to be exchanged or used for air transportation knowing or having reason to know or believe that such tickets or other documents will not be or cannot be legally honored by air carriers for air transportation.

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss of or damage to baggage or other property.

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[1] The word "misrepresentation" used in this list includes any statement or representation made in advertising or made orally to members of the public which is false, fraudulent, deceptive or misleading, or which has the tendency or capacity to deceive or mislead.

(n) Misrepresentation as to the requirements that must be met by persons or organizations in order to qualify for charter or group fare flights.

§ 399.81 Unrealistic or deceptive scheduling.

(a) It is the policy of the Board to consider unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation to be an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

(b) With respect to the advertising of scheduled performance, it is the policy of the Board to regard as an unfair or deceptive practice or an unfair method of competition the use of any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of systemwide operations, thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

[PS-111, 49 FR 40567, Oct. 17, 1984, as amended by PS-114, 50 FR 456, Jan. 4, 1985]

§ 399.82 Passing off of carrier identity by affiliation between carriers.

(a) *Applicability.* This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Board will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Board may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) *Definition.* For the purpose of this statement, the term "affiliation," as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

(1) Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;

(2) Is in control of the other within the meaning of section 408 of the Act;

(3) Has any of the interlocking relationships described in section 409 of the Act;

(4) Is jointly controlled with the other carrier, directly or indirectly by a third person;

(5) Provides general agency services for the other carrier.

For the purpose of this statement, "general agency services" shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity, local sales offices; passenger services; local government representation; purchase, lease or other acquisition of equipment; or aircraft and transit services, aircraft inspection, aircraft dispatch.

(c) *Minimum safeguards.* The minimum safeguards which the Board will consider as adequate to foreclose passing off by affiliated carriers are as follows:

(1) An air carrier and any affiliated foreign air carrier shall not engage in joint public relations activities at points served by both carriers which tend to pass off the services of one carrier as the services of the other carrier or as part of a unified system of which each is a part;

(2) Where one affiliated carrier provides general agency services for the other carrier, at points served by both carriers, it shall specifically identify all flights of the other carrier as flights of that carrier without reference to any relationship to the carrier performing the agency services;

(3) All forms of display (including aircraft insignia), scheduled publications, advertising, or printed matter employed by affiliated carriers shall not state or imply that the services of either carrier are performed in common with the other carrier or as part of a single system. In cases where it is necessary to indicate that any agency service is performed by one affiliated carrier for the other, the references to the carrier performing the agency should be sufficiently subordinated to the name of the other carrier as to emphasize the limited role of the agent;

(4) Telephone facilities at points served by both carriers should preserve the identity of the individual carriers;

(5) Where joint traffic or sales facilities are maintained by affiliated carriers, the separate identity of each carrier should be maintained by reasonably comparable use of display advertising, desk-space, personnel uniforms, and other facilities and activities;

(6) Where one carrier sells time payment tickets for travel over the other carrier (except interline travel), the application form should identify the carrier performing the transportation;

(7) The respective personnel of the affiliated carriers shall preserve the individual identity of the respective carriers in all public dealings.

(d) *Unfair and deceptive practice.* It is the policy of the Board to regard any joint activity of an affiliated air carrier and a foreign air carrier as an unfair or deceptive practice or unfair method of competition where such joint activity does not satisfy the minimum safeguards enumerated in the preceding subsection.

(e) *Exceptions.* Exceptions to a safeguard set forth in paragraph (c) of this section may be recognized for activities in a foreign country if the Board finds that special circumstances pertaining to the country render the safeguard inappropriate. Exceptions on other grounds may be recognized pursuant to § 399.4.

[PS-29, 30 FR 13781, Oct. 29, 1965]

§ 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.

It is the policy of the Board to consider the practice of an air carrier, foreign air carrier, or ticket agent, of stating to a prospective passenger by telephone or other means of communication that a reservation of space on a scheduled flight in air transportation is confirmed before a passenger has received a ticket specifying thereon his confirmed reserved space, to be an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of section 411 of the Act, unless the tariff of the particular air carrier or foreign air carrier provides for confirmation of reserved space by the means so used.

(Secs. 402, 403, 404, 411, Federal Aviation Act of 1958, as amended (72 Stat. 757, 758, 760, 769; 49 U.S.C. 1372, 1373, 1374, and 1381)

[PS-58, 39 FR 38096, Oct. 29, 1974]

§ 399.84 Price advertising.

The Board considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, a tour (i.e., a combination of air transportation and ground accommodations), or a tour component (e.g., a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component.

[PS-113, 49 FR 49440, Dec. 20, 1984]

§ 399.85 [Reserved]

§ 399.86 Payments for non-air transportation services for air cargo.

The Board considers that payments by air carriers and foreign air carriers to shippers, indirect air carriers, or foreign indirect air carriers for non-air transportation preparation of air cargo shipments are for services ancillary to the air transportation, and are not prohibited under section 403 of the Act.

(Secs. 102, 204, 403, and 404 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 758, 760; (49 U.S.C. 1302, 1324, 1373, 1374))

[PS-86, 44 FR 45609, Aug. 3, 1979]

§ 399.87 Super Bowl tours.

(a) A Super Bowl tour is a tour operated on either scheduled or charter service that is represented by its operator as including tickets to the National Football League's Super Bowl game as part of its ground package.

(b) The Board considers the advertising of a Super Bowl tour to be an unfair and deceptive practice within the meaning of section 411 of the Act unless one of the following is true:

(1) The tour operator is in physical possession of enough Super Bowl game tickets to provide such tickets for a substantial number of seats on the tour;

(2) The National Football League (NFL) office or an NFL team has made a binding written commitment in writing to furnish the operator with enough Super Bowl game tickets to provide such tickets for substantial number of seats on the tour; or

(3) A person that has a binding commitment from the NFL office or an NFL team for Super Bowl tickets has made a binding written commitment to furnish the tour operator with enough tickets for a substantial number of seats on the tour.

(c) The Board considers it to be an unfair and deceptive practice within the meaning of section 411 of the Act for a tour operator to accept money for a Super Bowl tour unless the operator is in physical possession of, or has a binding written commitment from the NFL office, an NFL team, or a person with a binding written commitment from the NFL office or an NFL team for, enough Super Bowl game tickets for each tour participant that is supposed to receive one under the terms of the sale.

(Secs. 204 and 411 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 769 (49 U.S.C. 1324, 1381))

[PS-90, 44 FR 69915, Dec. 4, 1979]

§ 399.88 Policy on airline designator code-sharing.

It is the policy of the Department of Transportation to consider the use of a single air carrier designator code by two or more air carriers to be unfair and deceptive and in violation of section 411 of the Act unless, in conjunction with the use of such codes, the air carriers give reasonable and timely notice of the existence of such code-sharing arrangements. Reasonable notice shall as a minimum require code-sharing air carriers to:

(1) Identify, with an asterisk or other means, each flight in which the airline code is different from the code of the carrier actually providing the service, in written or electronic schedule information provided by the air carrier to the public, the Official Airline Guide and, where applicable, computer reservations system vendors;

(2) Provide information in any direct oral communication with a consumer concerning a code-sharing flight sufficient to alert the consumer that the flight will occur on an airline different from the carrier whose code is used and identify the carrier(s) actually providing the service; and

(3) Provide frequent, periodic notice in advertising media that can reasonably be expected to convey to potential passengers and travel agents the existence of a code-sharing relationship and the identities of the carriers actually providing the service.

[50 FR 38511, Sept. 23, 1985]

Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers

§ 399.90 Non-transport activities of subsidized air carriers.

(a) *Applicability.* This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with regard to subsidized carriers, is required to make a determination as to the public interest or consistency with the Act. Its applicability shall include, but not be limited to, proceedings under sections 408, 409, and 412 of the Act.

(b) *Non-transport activity* means any business activity performed by a subsidized air carrier which is not an integral part of the transportation of persons, property or mail by the carrier pursuant to its certificate of public convenience and necessity or other authorization granted by the Board.

(c) *Presumption against non-transport activity.* Substantial engagement by subsidized carriers in non-transport activities will be presumed by the Board not to be in the public interest. The carriers shall have the burden of proving through factual evidence submitted in proceedings before the Board that their engagement in such activities will not involve a risk of significant financial loss and will not unduly divert the management or otherwise interfere with the primary business of the subsidized carrier which is to provide air transportation.

(d) *Public interest factors.* The major factors which the Board will consider in determining whether a nontransport activity is in the public interest are as follows:

(1) The amount of additional investment in plant and organization and the number of personnel necessary to perform the non-transport activity in excess of that required to perform the carrier's own air transportation functions (to the extent the non-transport activity is performed making use of the idle time of plant, organization and personnel essential to the carrier's air transport function it shall not be deemed adverse to the public interest);

(2) The carrier's past experience and degree of financial success in performing the activity;

(3) The amount and strength of the competition;

(4) The speculative nature of the activity;

(5) The affinity of the activity to the normal activities of an air carrier;

(6) The amount of supervision by the management required by the nature and scope of the activity;

(7) The extent to which the financial interest of the carrier in the nontransport activity may conflict with its interest in the economic performance of air transportation;

(8) The extent to which the nontransport activity contributes to the development of traffic over the routes of the carrier; and

(9) The extent to which the activity constitutes a contribution to safety in air commerce which would be lost if the activity were discontinued.

§ 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

(a) *Applicability.* This policy shall apply to proceedings under sections 408, 409, and 412 of the Act in which the Board is required to make any determination as to the public interest or consistency with the Act of any agreement or relationship sought to be entered into by an air carrier, or officer or director thereof, with a foreign airline in connection with the performance of some activity pursuant to a technical assistance contract financed by an agency of the U.S. Government.

(b) *Policy.* It is the policy of the Board that all U.S. air carriers interested in performing contracts for aviation technical assistance to foreign airlines should have equal access to information necessary to bid on such contracts, and should be given equal consideration thereafter in the award of such contracts based upon customary contracting criteria and subject to the considerations set forth below:

(1) The air carrier selected should possess the necessary technical and managerial skills and economic strength to perform the assigned task in the recipient country to the credit of the United States. Where familiarity with the particular language and

culture of the recipient country are important to the success of the project, weight should be given to the capabilities of all interested carriers in this regard, including particularly those which a route carrier may have acquired through service to the country or area.

(2) Where a single U.S. route carrier is serving or is certificated to serve the recipient country or the region in which it is located, and where initiation or continued operation of the route by such carrier is an important national interest objective of the United States, weight should be given to any evidence that an award of the contract to the route carrier as opposed to any other U.S. carrier would be held to achieve this objective.

(3) An air carrier performing a technical assistance contract will necessarily occupy a close special relationship with the airline and government of the recipient country. Over and above the terms of any specific contract, there is latent in such relationship the possibility of a relative preference for such carrier over a competing U.S. air carrier in matters of interline traffic, governmental restrictions, etc. Accordingly, where more than one U.S. route carrier is certificated to serve the recipient country and more than one such carrier wishes to perform the technical assistance, none of such carriers should be awarded the contract over the objection of any other except under very unusual circumstances.

(4) Technical assistance contracts should contain realistic objectives and require competent performance at reasonable cost and within a reasonable period of time consistent with the ability of the foreign airline to become self-sufficient.

(5) Technical assistance contracts should not be awarded to a U.S. route carrier with major economic interests hostile to those of the U.S. route carrier serving the country.

(6) Technical assistance contracts should not be awarded to subsidized carriers except under special circumstances. Such circumstances should include at least a showing (i) that the subsidized carrier has special qualifications, the utilization of which is required in the national interest by the circumstances of a particular program, and (ii) that performance of the contract will not interfere with the primary business of the subsidized carrier which is to provide air transportation in the United States. In the latter connection, it is to be recognized that participation with maximum effectiveness in a technical assistance program would not only divert the attention of top management from certificated services but might also involve the assignment of the most competent senior operational and technical personnel, the diversion of funds at least on a short-term basis, and the possible transfer from certificated services of aircraft and related equipment. Normally, therefore, unless substantial evidence and arguments are produced to the contrary, participation by subsidized carriers in technical assistance programs will be considered inconsistent with the public interest.

(Secs. 102, 408, 409 and 412 of the Federal Aviation Act of 1958, 72 Stat. 740, 767, 768 and 770; 49 U.S.C. 1302, 1378, 1379, and 1382)

[PS-22, 29 FR 5788, May 1, 1964]

§ 399.92 Interlocking relationships between an air carrier and a person controlling another air carrier.

The Board interprets section 409 of the Federal Aviation Act of 1958, as amended, as making unlawful, unless approved by order of the Board, interlocking relationships between an air carrier and a person controlling another air carrier.

(Sec. 409, 72 Stat. 768, 49 U.S.C. 1379; sec. 3, 80 Stat. 383, 5 U.S.C. 552)

[PS-31, 32 FR 3818, Mar. 8, 1967]

Subpart I—Policies Relating to Disclosure of Information

§ 399.100 Release of international passenger origin and destination statistics.

(a) International data in the Civil Aeronautics Board's "Origin-Destination Survey of Airline Passenger Traffic" are contained in reports submitted by U.S. carriers to the Board, in data banks on magnetic tape maintained at the CAB, and in tabulations prepared from the data banks by CAB.

(b) Similar international passenger origin and destination survey data covering the operations of the non-U.S. carriers are not generally available to the Civil Aeronautics Board, the U.S. carriers, or U.S. interests. Therefore, because of the damaging competitive impact upon U.S.-flag carriers and the adverse effect upon the public interest that would result from unilateral disclosure of the U.S. survey data, the Civil Aeronautics Board has determined its policy to be that the international data in the CAB "Origin-Destination Survey of Airline Passenger Traffic" shall be disclosed only as follows:

(1) To an air carrier directly participating in, and contributing input data to, the survey; or to a legal or consulting firm or other organization designated by an air carrier to use on its behalf O&D data in connection with a specific assignment by such carrier.

(2) To parties to any proceeding before the Board to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board. Any data to which access is granted pursuant to this section may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government.

(4) To other persons upon a showing that the release of the data will serve specifically identified needs of U.S. users which are consistent with U.S. interests.

(5) To foreign governments and foreign users as provided in formal reciprocal arrangements between the foreign and U.S. governments for the exchange of comparable O&D data.

(c) The Board reserves the right to make such other disclosure of the subject data as is consistent with its regulatory functions and responsibilities.

(Sec. 1104, 72 Stat. 797, 49 U.S.C. 1504; secs. 3, 4, 80 Stat. 383, 81 Stat. 54, 5 U.S.C. 552, 553)

[PS-39, 34 FR 8039, May 22, 1969]

§ 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

(a) By Executive Order 11920, 41 FR 23665 (June 11, 1976), effective July 11, 1976, the President has authorized the issuance for public inspection of decisions by the Board in cases where the action of the Board is subject to the review or approval of the President in accordance with section 801 of the Federal Aviation Act. In the interest of national security, and in order to allow for consideration of appropriate action under Executive Order 11652, Executive Order 11920 provides that decisions shall be withheld from public disclosure for five days after submission to the President but may be released on or after the sixth day following receipt by the President as to all unclassified portions of the text if the Board is not notified by the Assistant to the President for National Security Affairs or his designee that all or part of the decision shall be withheld from public disclosure.

(b) It is the policy of the Board to release to the public all decisions by the Board in section 801 cases as promptly as possible following submission of such decision to the President. Upon receipt of notice by the Assistant to the President for National Security Affairs as required by the Executive Order, the Board shall promptly provide one copy for public inspection in the Docket Section and one copy for public inspection and copying in the Public Reference Room, and shall promptly thereafter print and process the decision for more general distribution in accordance with Board procedures. Where the Board is required to withhold portions of the text of its decision it shall make public those portions of its decision which may be publicly released. Where the Board is required to withhold public release of its decision in its entirety it shall nonetheless publicly indicate that its decision has been transmitted to the President. The Board shall not publicly indicate that its decision has been transmitted to the President in those cases in which the Assistant to the President for National Security Affairs or his designee determines that classification of the existence of the decision is appropriate and so informs the Board. The provisions are also applicable to decisions submitted to the President for review pursuant to section 801(b) of the Act.

(Secs. 204, 801, 1001, 72 Stat. 743, 782, 788, (49 U.S.C. 1324, 1461, 1481, 5 U.S.C. 552))

[PS-72, 41 FR 46291, Oct. 20, 1976]

§ 399.102 Routine public release of certain internal staff memoranda discussed at open Board meetings.

(a) The Civil Aeronautics Board conducts the majority of its business in open public sessions under the Government in the Sunshine Act. During the course of these meetings, a variety of items is discussed. Most items are presented to the Board in the form of a staff memorandum which outlines the issue for Board determination, recommends a proposed disposition, and usually contains a draft order, notice, rule, or opinion for the Board's consideration. If the Board approves the staff recommendation, the draft issuance is adopted subject to the Board's changes in the proposed language. Adoption of the staff recommendation at an open meeting does not constitute final Board disposition of the item. The board acts only by the subsequent public issuance. The Board, as a matter of discretion, has determined to make routinely available most portions of internal staff memoranda acted on during the course of its open meetings so that the public will have an opportunity to more fully understand what is has observed at the open sessions.

(b) Internal staff memoranda are not part of the record of the proceeding; they are working papers created during the process of decisionmaking and this discretionary release does not alter their status. Thus, the Board has no obligation to consider documents, pleadings, filings, or other material based on the contents of released internal staff memoranda.

(c) This policy of discretionary release is independent of the Board's responsibilities under the Freedom of Information Act. Accordingly, material may be withheld from routinely released memoranda and later reviewed when a written FOIA request is submitted. If any material is withheld from routinely released memoranda, the memoranda will so state.

(d) As a service to members of the public attending open meetings, the Board will provide one free copy of each routinely released memorandum to individuals making an in-person request following that day's meeting at the Board's Docket Section, Room 714. All other requests for copies of routinely released memoranda are subject to the Board's fee schedule set forth in Part 389 and should be made in writing to the Office of the Secretary. A set of each meeting's routinely released memoranda will be available for public inspection and copying in the Board's Public Reference Room, Room 710, for one week following the meeting at which they are discussed. A permanent copy of each routinely released memorandum will be placed in a separate section of the docket(s) discussed in each released memorandum.

[PS-77, 43 FR 22343, May 25, 1978]

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

AUTHORITY: Secs. 102, 105, 204, 401, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 740, 743, 754, 758, 771; 49 U.S.C. 1302, 1305, 1324, 1371, 1373, and 1386.

SOURCE: PS-83, 44 FR 9951, Feb. 15, 1979, unless otherwise noted.

§ 399.110 State economic regulation of federally authorized carriers prohibited.

(a) Section 105 of the Act states, that except as provided in paragraph (b) of this section, no State or political subdivision thereof and no interstate agency of two or more States shall enact or enforce any law, rule, regulations, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under Title IV of the Act to provide interstate air transportation.

(b) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 401 of the Act, the provisions of paragraph (a) shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

(c) Except for air transportation conducted wholly within the State of Alaska, any air carrier holding an effective certificate of public convenience and necessity issued pursuant to section 401 or 418 of the Act, an exemption from those sections pursuant to Part 298 of this chapter, or any other authority under Title IV of the Act to provide interstate air transportation qualifies as a federally authorized carrier for purposes of the preemption of State regulation under this subpart.

(d) Examples of regulatory actions preempted under this section include, but are not limited to, tariff filing, certification, regulations governing flight frequency, mode of operation, in-flight amenities, liability, insurance, bonding, and capitalization.

(e) The Board adopts as its own existing State regulations governing insurance and bonding of federally authorized carriers until the Board has reviewed the need for Federal regulation in those areas. Proof of compliance with state rules, as required by State law, shall be filed with the Special Authorities Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

(f) This subpart shall not limit the authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States, as the owner or operator of any airport served by any air carrier certificated by the Board, to exercise its proprietary powers and rights, when such exercise is reasonable, nondiscriminatory, nonburdensome to interstate commerce, and designed to accomplish a legitimate State objective in a manner that does not conflict with the provisions and policies of the Act.

§ 399.111 All operations of Federally authorized carriers to be regulated by the Board.

(a) All operations of Federally authorized carriers are subject to the requirements of Title IV of the Act, including certification and tariff-filing requirements, unless otherwise exempted from one or more of those requirements by Board order or regulation.

(b) When any intrastate air carrier that in August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation received from the Board under Title IV of the Act, until suspended, amended, or terminated as provided under such title.

PARTS 400—1199 [RESERVED]

FINDING AIDS

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Redesignation Tables

At 40 FR 28079, July 3, 1975, Part 296 was revised and recodified. The following table shows the relationship between the new structure in Part 296 and the old regulations.

CROSS-REFERENCE TABLE

Former section	New section
PART 296	
296.1(a)	296.1(e).
296.1(b)	296.1(d).
296.1(c)	296.1(g).
296.1(d)	296.1(h).
296.1(d–l)	296.1(i).
296.1(e)	296.1(a).
296.2(a)	296.2(a).
296.2(b)	296.2(c).
296.3	296.3.
296.4	296.5.
296.6	Deleted.
296.11	296.11.
296.12	296.12.
296.13	296.13.
296.21	296.21.
296.22	296.22.
296.31	296.31.
296.40	296.51.
296.41	296.54.
296.42	296.55.
296.43(a)	Deleted.
296.43(b)	296.57.
296.44	296.58.
296.45(a)	296.59.
296.45(b)	296.56(b).
296.45(c)	296.60.
296.46	296.56(a).
296.46(a)	296.23.
296.47	296.61.
296.48(a)	296.62(b).
296.48(b)	296.62(c).
296.48(c)	296.62(c).
296.48(d)	296.62(d).
296.48(e)	296.62(e).
296.49	296.63.
296.50	Deleted.
296.51	296.52.
296.60	Deleted.
296.70	296.73.
296.71	296.71.
296.72	296.72.
296.80	296.80.
296.81	296.81.
296.82	296.82.
296.83	296.83.
296.84	296.84.
296.85	296.85.
296.86	296.86.
296.87	296.87.
296.88	296.88.
296.89	296.89.
297.1(a)	296.1(e).
297.1(b)	296.1(d).
297.1(c)	296.1(f).
297.1(d)	296.1(g).
297.1(e)	296.1(h).
297.1(e–l)	296.1(i).
297.1(f)	296.1(a).
297.2	296.1(b).
297.3	296.4.
297.5	Deleted.
297.11	296.11.
297.12	296.13.
297.21	296.21.
297.22	296.22.
297.23	296.41.
297.31	296.54.
297.32	296.55.
297.33	Deleted.
297.34(a)	296.57(a).
297.34(b)	296.56(a).
297.34(c)	296.56(b).
297.34(d)	296.57(b).
297.34(e)	296.57(c).
297.35	296.58.
297.36(a)	296.59
297.36(b)	296.60.
297.37	296.61.
297.38	296.43.
297.39	296.23.
297.40	296.42.
297.41	296.51.
297.42	Deleted.
297.43(a)	296.62(b).
297.43(b)	296.62(c).
297.43(c)	296.62(c).
297.43(d)	296.62(d).
297.44	296.63.
297.45	296.52.
297.50	296.72.
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297.51(b)	296.73.
297.60	296.80.
297.61	296.81.
297.62	296.82.
297.63	296.83.
297.64	296.84.
297.65	296.85.
297.66	296.86.
297.67	296.87.
297.68	296.88.
297.69	296.89.

Redesignation Tables

At 40 FR 42855, September 17, 1975, Part 298 was revised and recodified. The following table shows the relationship between the new structure in Part 298 and the old regulations.

CROSS-REFERENCE TABLE

Former section	New section
PART 298	
298.1	298.1.
298.2	298.2.
298.3	298.3.
298.4	298.4.
298.5	Deleted.
298.6	298.64.
298.7	298.64.
298.11(a), (c)–(i)	298.11(a), (c)–(i).
298.11(b)	298.11(b), 298.70.
298.12	298.12.
298.13	298.13.
298.14	298.14.
298.21(a)	298.31.
298.21(b)	298.33.
298.21(c)	298.34.
298.21(d)	298.33.
298.21(e)	298.33(d).
298.21(f)(1)	298.35.
298.21(f)(2)	Deleted.
298.21(g)	298.37.
298.22(a)	298.31.
298.22(b)	298.32(a).
298.22(c)	298.32(b).
298.23	298.36.
298.41(a)–(c)	298.41(a)–(c).
298.41(e)	298.41(d).
298.42	298.42.
298.43	298.43.
298.44	298.44.
298.45	298.45.
298.50	298.21.
298.51	298.22.
298.52	298.23.
298.60	298.61.
298.61	298.60.
298.63	298.61(b).
298.64	298.61(c)–(f).
298.65	298.61(g).
298.66	298.62.
298.67	298.63.
298.70	298.70.
298.80	298.80.

On December 31, 1984, the Civil Aeronautics Board (CAB) went out of existence and most of its authority transferred to the Department of Transportation. The following table, published at 50 FR 452, Jan. 4, 1985, lists regulations administered by the Civil Aeronautics Board prior to January 1, 1985. This table gives the disposition of these regulations, indicating whether they were transferred to the Department of Transportation, to be reissued by DOT, or revoked by CAB.

CAB DISPOSITION TABLE

Part	Title	Disposition
	Subchapter A—Economic Regulations	
200	Definitions and instructions	Transfer to DOT.
201	Applications for certificates of public convenience and necessity.	Do.
202	Certificates authorizing scheduled route service: Terms, conditions, and limitations.	Do.
203	Waiver of Warsaw Convention liability limits and defenses.	Do.
204	Data to support fitness determinations.	Do.
205	Aircraft accident liability insurance	Do.
206	Certificates of public convenience and necessity: Special authorizations.	Do.
207	Charter trips and special services	Do.
208	Terms, conditions, and limitations of certificates to engage in charter air transportation.	Do.
211	Applications for permits to foreign air carriers.	Do.
212	Charter trips by foreign air carriers.	Do.
213	Terms, conditions, and limitations of foreign air carrier permits.	Do.
214	Terms, conditions, and limitations of foreign air carrier permits authorizing charter air transportation only.	Do.
215	Names of air carriers and foreign air carriers.	Do.
216	Commingling of blind sector traffic by foreign air carriers.	Do.
217	Reporting data pertaining to civil aircraft charters performed by U.S. certificated and foreign air carriers.	Do.
218	Lease by foreign air carrier or other foreign person of aircraft with crew.	Do.
221	Tariffs	Do.
222	Intermodal cargo services by foreign air carriers.	Do.
223	Free and reduced-rate transportation.	Do.
228	Embargoes on property	Do.
231	Exemption from schedule filing	Do.
232	Transportation of mail, review of orders of Postmaster General.	Do.
235	Reinvestment of gains derived from the sale or other disposition of flight equipment.	Do.
240	Inspection of accounts and property.	Do.
241	Uniform system of accounts and reports.	Do.
245	Reports of ownership of stock and other interests.	Revoked.
246	Reports of stock ownership of affiliates of air carriers.	Do.
247	Direct airport-to-airport mileage records.	Transfer to DOT.
248	Submission of audit reports	Do.
249	Preservation of air carrier records	Do.
250	Oversales	Do.
251	Prohibited interests; interlocking relationships.	Do.
252	Smoking aboard aircraft	Do.
253	Notice of terms of contract of carriage.	Do.
254	Domestic baggage liability	Do.
255	Carrier-owned computer reservation systems.	Do.
256	Display of joint operations in carrier-owned computer reservations systems.	Do.
261	Filing of agreements	Do.
263	Participation of air carrier associations in Board proceedings.	Do.
270	Criteria for designating eligible points.	Do.
271	Guidelines for subsidizing air carriers providing essential air transportation.	DO.
287	Exemption and approval of certain interlocking relationships.	Do.
288	Exemption of air carriers for military transportation.	Do.
291	Domestic cargo transportation	Do.
292	Classification and exemption of Alaskan air carriers.	Do.
294	Canadian charter air taxi operators.	Do.
296	Indirect air transportation of property.	Do.
297	Foreign air freight forwarders and foreign cooperative shippers associations.	Do.
298	Exemptions for air taxi operations	Do.
299	Exemption from section 408 for aircraft acquisitions.	Do.
	Subchapter B—Procedural Regulations	
300	Rules of conduct in Board proceedings.	Reissued by DOT.
302	Rules of practice in Board proceedings.	Do.
305	Rules of practice in informal nonpublic investigations.	Do.
310	Inspection and copying of Board opinions, orders, and records.	Do.
310a	Access to systems of records—regulations and exemptions implementing the Privacy Act of 1974.	Do.
310b	Public access to Board meetings	Revoked.

CAB DISPOSITION TABLE—Continued

Part	Title	Disposition
311	Classification and declassification of national security information and material.	Reissued by DOT.
312	Implementation of the National Environmental Policy Act.	Revoked.
313	Implementation of the Energy Policy and Conservation Act.	Reissued by DOT.
314	Employee Protection Program	Do.
315	Information submitted in section 408 applications.	Transfers to DOT.
316	Collection of claims owed the United States.	Reissued by DOT.
320	Procedures for awarding Japanese charter authorizations.	Do.
321	Unused authority procedures	Transfer to DOT.
323	Terminations, suspensions, and reductions of service.	Reissued by DOT.
324	Procedures for compensating air carriers for losses.	Do.
325	Essential air service procedures	Do.
326	Procedures for bumping subsidized air carriers from eligible points.	Do.
	Subchapter C—[Reserved]	
	Subchapter D—Special Regulations	
370	Employee responsibility and conduct.	Revoked.
372	Overseas military personnel charters.	Transfer to DOT.
373	Implementation of the Equal Access to Justice Act.	Do.
374	Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers.	Do.
374a	Extension of credit by airlines to Federal political candidates.	Do.
375	Navigation of foreign civil aircraft within the United States.	Do.
377	Continuation of expired authorizations by operation of law pending final determination of applications for renewal thereof.	Do.
379	Nondiscrimination in federally assisted programs of the Board—Effectuation of Title VI of the Civil Rights Act of 1964.	Do.
380	Public charters	Do.
382	Nondiscrimination on the basis of handicap.	Do.
	Subchapter E—Organization	
384	Statement of organization, delegation of authority, and availability of records and information.	Do.
385	Delegations and review of action under delegation; nonhearing matters.	Reissued by DOT.
387	Organization and operation during emergency conditions.	Transfer to DOT.
389	Fees and charges for special services.	Do.
	Subchapter F—Policy Statements	
398	Guidelines for individual determinations of essential air transportation.	Do.
399	Statements of general policy	Do.
400–1199	(Reserved)	

[illegible]	Terms, conditions, and limitations of foreign air carrier permits.	Do.
[illegible]	Terms, conditions, and limitations in foreign air carrier permits authorizing charter air transportation only.	Do.
[illegible]	[illegible] of air carriers and foreign air carriers.	Do.
[illegible]	Commingling of blind sector traffic by foreign air carriers.	Do.
[illegible]	Reporting data pertaining to civil aircraft charters performed by U.S. certificated and foreign air carriers.	Do.
[illegible]	Lease by foreign air carrier or other foreign person of aircraft with crew.	Do.
[illegible]	Tariffs	Do.
[illegible]	Intermodal cargo services by foreign air carriers.	Do.
[illegible]	Free and reduced-rate transportation.	Do.
[illegible]	[illegible] on pricing	Do.
[illegible]	Exemption from schedule filing	Do.
[illegible]	Transportation of mail; review of orders of Postmaster General.	Do.
[illegible]	[illegible]	Do.
[illegible]	Inspection of accounts and property.	Do.
[illegible]	[illegible] system of accounts and reports.	Do.
[illegible]	Records of [illegible] interest.	Revoked.
[illegible]	Filing of agreements	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	Evaluation and approval of [illegible]	Do.
[illegible]	Exemption of air carriers for military transportation.	Do.
[illegible]	Domestic cargo transportation	Do.
[illegible]	Classification and exemption of [illegible] air carriers.	Do.
[illegible]	Canadian charter air taxi operators.	Do.
[illegible]	[illegible]	Do.
[illegible]	Foreign air freight forwarders and foreign cooperative shippers associations.	Do.
[illegible]	Exemptions for air taxi operations	Do.
[illegible]	Exemption from section 408 for aircraft acquisitions.	Do.
	Subchapter B—Procedural Regulations	
300	Rules of conduct in Board proceedings.	Released to DOT.
302	Rules of practice in Board proceedings.	Do.
305	Rules of practice in informal nonpublic investigations.	Do.
310	Inspection and copying of Board opinions, orders, and records.	Do.
[illegible]	Access to systems of records—regulations and exemptions implementing the Privacy Act of 1974.	Do.
[illegible]	Public access to Board meetings	Revoked.

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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322 Note added 11211
322.5 Revised 16961
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380.34 (b)(1) revised 12981
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385.14a Added 42175
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(v) added; eff. 1-3-80 69642
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Editorial Note: The Department of Transportation, Office of the Secretary, assumed 14 CFR Chapter II when the Civil Aeronautics Board went out of existence and revised the heading to read "Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings)," effective January 1, 1985. Both of these agencies, however, published under Chapter II in December, 1984, and January, 1985. Regulations pub-

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lished by CAB in January, 1985, were adopted before the Agency ceased to exist and are listed in the 1985 LSA directly above. Regulations published by DOT on December, 31, 1984, which did not become effective until January 1, 1985, and from January 1, 1985, through February 1, 1985, and given in the LSA's set forth below.

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Editorial Note: The reservation of 14 CFR Chapter III for the Office of Space Transportation, DOT, will be the subject of a publication in the Federal Register in the near future.

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